

(H. B. 2027)
(Conference)

(No. 219-2014)

(Approved December 16, 2014)

AN ACT

To amend subsections (a) and (c) and add new subsections (f) and (g) to Section 6080.14 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico”; amend subsection (a) of Section 3 of Article 1 of Act No. 18-2014, better known as the “Municipal Administration Fund Act”; amend Sections 2 and 3, add a new Section 6, amend current Section 12 and renumber current Sections 6, 7, 8, 9, 10, 11, 12, 13, and 14 as Sections 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Act No. 19-2014, known as the “Municipal Finance Corporation Act,” in order to establish that the Board of Directors of the Municipal Finance Corporation (COFIM, Spanish acronym) shall be composed of the President of the Government Development Bank for Puerto Rico (GDB) or his representative, two (2) members of the GDB’s Board of Directors, three (3) mayors and one (1) representative of the public interest; broaden the powers of COFIM’s Board of Directors, including the effective date of certain provisions of Act No. 18-2014 and Act No. 19-2014; provide that municipalities shall require taxpayers to pay the municipal sales and use tax to the order of COFIM, as agent and trustee in benefit of municipalities, or in the manner prescribed by COFIM through regulations; establish the obligation of each municipality to remit immediately to COFIM the total amounts collected from municipal sales and use tax, as well as the interest penalty for failure to remit amounts on time; clarify the transfer date for existing loans and the ratification thereof; clarify the effective date of advance payments; impose the penalties for several unlawful acts committed by municipal officials and employees; among others.

STATEMENT OF MOTIVES

Act No. 19-2014 created the Municipal Finance Corporation (COFIM) as a public corporation and instrumentality of the Commonwealth of Puerto Rico (ELA), within the Government Development Bank for Puerto Rico (GDB), for the purpose of strengthening the credit capacity of municipalities. In accordance with Act No.

19-2014, COFIM has the authority to issue bonds and use other financing mechanisms to pay or refinance, directly or indirectly, in whole or in part, the debts of the municipalities of the Commonwealth payable or backed by the municipal sales and use tax. To achieve such purposes, Act No. 19-2014 requires that, beginning on July 1, 2014, a portion of the municipal SUT to constitute COFIM property. However, after a comprehensive analysis on the most efficient way to ensure that said transfer does not affect the municipal SUT revenues, the Board of Directors of COFIM recommended that the transfer be postponed until the Board of Directors of COFIM establishes the commencement date.

Act No. 19-2014 provided that COFIM shall have a Board of Directors composed of seven (7) members, three (3) of whom shall be from the GDB; three (3) mayors, two (2) of whom shall belong to the political party controlling the most municipalities; and one (1) mayor elected by the political party that controls the second highest number of municipalities; 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. Furthermore, Act No. 19-2014 provides that the President of the GDB shall be the Chair of the Board of Directors of COFIM, since the President of the GDB is not a member of the GDB's Board of Directors. This amendment clarifies that the President of the GDB shall be one of the members of the Board of Directors of COFIM and provides that any two (2) members of the Board of Directors of the GDB, other than the President of the GDB in the event the latter is appointed as member of the Governing Board of the GDB, shall also be members of the Board of Directors of COFIM.

Furthermore, Act No. 19-2014 is amended to empower COFIM to adopt, promote, amend, and repeal such rules and regulations as may be necessary or pertinent to discharge its powers and duties in accordance with Act No. 19-2014, and to clarify that all bonds and notes issued by municipalities prior to the approval

of Act No. 19-2014 constitute valid and callable municipal obligations, regardless of any procedural or substantive deficiency in the approval, issuance, and sale of such obligations.

Moreover, the Internal Revenue Code is hereby amended, among other things, to provide that the municipalities shall require taxpayers to pay the municipal sales and use tax to the order of COFIM and to reiterate the municipalities' obligation to immediately remit the total amounts collected on account of the municipal sales and use tax directly to COFIM. Said amendments strengthen and make feasible COFIM's function as a financing entity with a consistent and reliable source of income for the benefit of every municipality.

Lastly, we hereby reiterate our legislative intent to make COFIM an independent entity, separate from the same "controlled group" as the Government of the Commonwealth of Puerto Rico, as defined by the regulations of the U.S. Internal Revenue Code related to the tax-exempt bonds (Treas. Reg. 1.150-1). Thus, this Act clearly establishes that the revenues derived from the municipal SUT shall only be used for municipal purposes and not by the central government of the Commonwealth of Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsections (a) and (c) are hereby amended and new subsections (f) and (g) are hereby added to Section 6080.14 of Act No. 1-2011, as amended, to read as follows:

“Section 6080.14.- Imposition of Sales and Use Tax by Municipalities.-

(a) Authorization and Mandatory Requirement.— Beginning on February 1, 2014, all municipalities shall uniformly and mandatorily impose a sales and use tax pursuant to the authorization established in Section 4020.10. Such tax shall consist of a one percent (1%) fixed tax rate to be collected by the municipalities. The one

percent (1%) tax rate shall be imposed in accordance with the same basis, exemptions, and limitations provided in Subtitle D of the Code, except for the exemptions provided in this Section.

For periods beginning on July 1, 2014, the one percent (1%) fixed tax rate shall be collected in its entirety by the municipalities or by a trustee to be designated in accordance with this Act.

(1) Municipalities shall impose the one percent (1%) fixed tax rate on food and food ingredients as defined in Section 4010.01(a) of this Act.

(2) ...

(b) ...

(c) **Tax Collection and Payment.**- As of February 1, 2014, the one percent (1%) tax shall be collected pursuant to Section 6080.14 of this Act. For periods beginning after the date established by the Board of Directors of COFIM, said Board shall designate a trustee (the 'Trustee') that is acceptable to the Government Development Bank for Puerto Rico, in order to, as agent of COFIM with respect to the Fixed Income provided in Section 3 of the 'Municipal Finance Corporation Act,' and of municipalities with respect to the Municipal Transfer provided in Section 3 of the 'Municipal Finance Corporation Act,' receive the one percent (1%) tax collected directly by the municipalities, or through agreements, approved by COFIM, entered into with the Secretary or private business, if the municipality so determines. In any case, in order to facilitate cash flow and ensure the payment obligations established in the 'Municipal Finance Corporation Act,' each municipality shall require taxpayers to pay the tax to the order of COFIM, as agent and trustee in benefit of such municipality, or as prescribed by COFIM through regulations to such effects. COFIM shall deposit the proceeds of such tax in the account established in the name of the Trustee. The revenues of the tax received by the Trustee shall be subject to:

- (1) ...
- (2) ...
- (3) ...
- (d) ...
- (e) ...
- (f) Unlawful Acts of Officials or Employees; Penalties.-

(1) Any official or employee of the municipal government or of COFIM who, acting under the authority of Section 6080.14 of Act No. 1-2011 and/or the ‘Municipal Finance Corporation Act’:

- (A) Commits the offense of extortion; or
- (B) conspires or agrees with another to defraud the municipal government or COFIM; or
- (C) willfully gives the opportunity to any person to defraud the municipal government or COFIM; or
- (D) performs or fails to perform any act with the intent to allow any other person to defraud the municipal government or COFIM; or
- (E) knowingly makes or signs any false entry in any record, or knowingly makes or signs any false return or certificate, in any case in which he is required to make such an entry, return, or certificate in accordance with Section 6080.14 of Act No. 1-2011 and/or the ‘Municipal Finance Corporation Act,’ or by regulations.
- (F) having knowledge or information of a violation of Section 6080.14 of Act No. 1-2011 and/or the ‘Municipal Finance Corporation Act’; or of fraud committed by any person against the municipal government under Section 6080.14 of Act No. 1-2011 and/or the ‘Municipal Finance Corporation Act,’ fails to state so in writing to his immediate superior; or

(G) directly or indirectly accepts or collects as payment, gift, or otherwise, any sum of money or other thing of value for processing, adjusting, or fixing any charge or claim involving a violation or alleged violation of Section 6080.14 of Act No. 1-2011 and/or 'Municipal Finance Corporation Act,' shall be guilty of a misdemeanor punishable by a fine not greater than five thousand dollars (\$5,000) or by imprisonment for a term not greater than six (6) months, or both penalties, at the discretion of the court.

(2) Any official or employee of the municipal government or COFIM who, acting under the authority of Section 6080.14 of Act No. 1-2011 and/or the 'Municipal Finance Corporation Act':

(A) Knowingly demands other or greater amounts than those authorized by law, or receives any fee, compensation, or gratuity for discharging his duty, except as prescribed by law; or

(B) willfully fails to discharge any of the duties imposed by Section 6080.14 of Act No. 1-2011 and/or the 'Municipal Finance Corporation Act'; or

(C) negligently or intentionally allows any violation of Section 6080.14 of Act No. 1-2011 and/or the 'Municipal Finance Corporation Act,' by any person; or

(D) directly or indirectly solicits or attempts to collect as payment, gift, or otherwise, any sum of money or other thing of value for processing, adjusting, or fixing any charge or claim involving a violation or alleged violation of Section 6080.14 of Act No. 1-2011 and/or 'Municipal Finance Corporation Act,' shall be guilty of a misdemeanor punished by a fine not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by imprisonment for a term not less than one (1) month nor more than six (6) months, or both penalties, at the discretion of the court.

(g) Willful Delay in Remitting the Tax Collected; Penalties.- Every municipality shall have the obligation of remitting to COFIM, daily or within any other period prescribed by COFIM through regulations, the total amounts collected directly by said municipality for the municipal sales and use tax. Any delays in remitting the municipal sales and use tax to the accounts designated by COFIM shall entail the payment of interests to COFIM from the date said amounts were collected to the date on which the deposit is made in the bank accounts designated by COFIM on the basis of a rate determined by COFIM through regulations which shall not exceed ten percent (10%) annually on the amount not remitted on time.”

Section 2.- Subsection (a) of Section 3 of Article 1 of Act No. 18-2014, as amended, is hereby amended to read as follows:

“Article 1.- ...

Subsection 1.- ...

Subsection 2.- ...

Subsection 3.- Purpose of the Fund.–

(a) ...

(i) ...

(ii) An amount equal to forty percent (40%) of the zero point five percent (0.5%) of the State SUT deposited in the MAF shall be transferred to the Municipal Redemption Fund of each municipality and distributed in accordance with Section 4050.08 of Act No. 1-2011, as amended. However, in the case of those municipalities that have not availed themselves of the exception provided in Section 4 of this Act and have not permanently waived the Municipal Development Fund distribution corresponding to them as provided in Section 4050.07 of Act No. 1-2011, the amount corresponding to their Municipal Redemption Fund shall be deposited, beginning on the date determined by the Board of Directors of COFIM, directly into their general fund as received. At their discretion, and if they deem so

convenient, any portion of the funds corresponding to municipalities may also be transferred to their general fund to contribute such amount to their Municipal Redemption Fund, in accordance with Section 4050.08 of Act No. 1-2011, as amended. Thus, they can increase their credit capacity and/or cover any deficiency in the Redemption Fund to service municipal debts, provided that such municipalities deposit at least ninety percent (90%) of the Municipal SUT in their general fund. Such transfer shall be made as provided in the regulations to be adopted by the GDB.

(iii) ...

(b) ...”

Section 3.- Subsections (f) and (g) of Section 2 of Act No. 19-2014, as amended, are hereby amended to read as follows:

“Section 2.- Creation of the Public Corporation.–

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) The Board of Directors of COFIM shall be composed of seven (7) members, one (1) of whom shall be the President of the GDB or the public official designated as his representative; two (2) of whom shall be members of the Board of Directors of the GDB, designated to serve on this Board; 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 President of the GDB, the members of the Board of Directors of the GDB designated as members of the Board of Directors of COFIM, and the three (3) mayors shall be *ex-officio* members of the Board of Directors of COFIM for the term of their tenure. However, in the case of mayors, such tenure 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, all of 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.

Any vacancy in the Board of Directors of COFIM, other than for the expiration of the term, shall be filled in the same manner as the original appointment, but for the remainder of the unexpired term. The members of the Board of Directors of COFIM shall not receive any compensation for their services. COFIM shall only reimburse any expenses incurred by them in carrying out their duties, subject to the regulations to be promulgated by the Board of Directors of COFIM.

The powers of COFIM shall be exercised by the Board of Directors of COFIM in accordance with the provisions of this Act. Four (4) members of the Board shall constitute a quorum, provided that at least two (2) of the mayors are in attendance. A vacancy in the Board of Directors of COFIM shall not impair its right to exercise all the powers and duties of COFIM.

The President of the GDB for Puerto Rico 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 shall 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 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.

(g) COFIM shall have the following powers, duties, and authorities, which may be exercised solely to attain the purposes for which COFIM was created.

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) ...
- (9) ...
- (10) ...
- (11) ...
- (12) ...
- (13) ...

(14) Act as agent and trustee in benefit of the municipalities and, exclusively in such capacity, receive the municipal sales and use tax payment directly and in his name.

(15) Adopt, proclaim, amend, and repeal such rules and regulations as is necessary or pertinent to discharge its powers and duties in accordance with this Act.

(16) Establish a structured and staggered work plan as of July 1, 2014, to implement and enforce the provisions of this Act, as well as the pertinent provisions of Act No. 18-2014.

(h) ...”

Section 4.- Section 3 of Act No. 19-2014, as amended, is hereby amended to read as follows:

“Section 3.- COFIM’s Redemption Fund.-

COFIM’s Redemption Fund’ is hereby created, into which all future funds that under the provisions of this Act are to be deposited in such Fund shall be deposited. Notwithstanding the foregoing, not later than June 30, 2014, the municipalities shall have the option to withdraw all available balances accrued in the municipal funds created by virtue of Sections 4050.07 and 4050.08 of Act No. 1-2011 corresponding to the Municipal Development Fund and the Municipal Redemption Fund, respectively.

All funds to be deposited in COFIM’s Redemption Fund under this Act are hereby transferred and shall be the property of COFIM on and from July 1, 2014 or on the date established by the Board of Directors of COFIM, in accordance with subsection (g)(16) of Section 2 of this Act. This transfer shall be made in exchange for and in consideration of COFIM’s commitment to pay or establish a payment mechanism to meet all or part of the existing obligations of the municipalities that have not availed themselves of the provisions of Section 4 of the Act that creates the

Municipal Administration Fund, which obligations are payable from or backed by the municipal SUT and the interest thereon, and for all other purposes established in Section 2(b) of this Act, with the net proceeds of COFIM's bond issues or available funds and resources, and other valuable considerations.

Every fiscal year, COFIM's Redemption Fund shall be funded with the following sources, the product of which shall be directly deposited into COFIM's Redemption Fund at the time they are received and shall not be deposited into the general funds of municipalities or the Commonwealth treasury, nor considered as available resources of the municipalities or the Commonwealth or available to be used by the municipalities or the Commonwealth:

(a) The first revenues of the one percent (1%) municipal sales and use tax, as provided in Section 6080.14 of Act No. 1-2011, as amended ("SUT"), until the greater of the following amounts has been deposited in COFIM's Redemption Fund ("COFIM's Deposit"):

(1) the product of: (A) the amount of the one percent (1%) Municipal Tax collected during the preceding fiscal year multiplied by (B) a fraction whose numerator shall be zero point three percent (0.3%) and whose denominator shall be the Municipal SUT rate during the preceding fiscal year, or

(2) the applicable Fixed Income.

For purposes of Section 3(a)(2) of this Act, the Fixed Income for fiscal year 2014-2015 shall be sixty-five million five hundred forty-one thousand two hundred eighty-one dollars (\$65,541,281) ("Original Fixed Income"). The Fixed Income for each subsequent fiscal year shall be equal to the Fixed Income for the preceding fiscal year plus one point five percent (1.5%) of the Fixed Income. COFIM's Deposit for any fiscal year shall originate from the portion corresponding to the first revenues of the Municipal Tax during said fiscal year.

(b) ..."

Section 5.- A new Section 6 is hereby added to Act No. 19-2014, as amended, to read as follows:

“Section 6.- Ratification of Existing Loan Documents.-

All notes and bonds issued by the municipalities before the effective date of this Act that are backed by the sales and use tax; all procedures conducted for the authorization, issuance, and sale of such bonds and notes; and all procedures conducted for the execution, sale, and delivery of such bonds or notes, notwithstanding any defect or deficiency of form or substance in the procedure for the authorization, issuance, sale, exchange, or delivery of such bonds or notes, are hereby ratified under this Act. Said bonds and notes are and shall constitute valid and callable municipal obligations.”

Section 6.- Subsections (a) and (b) of the current Section 12 of Act No. 19-2014, as amended, are hereby amended to read as follows:

“Section 12.– Cash Flow Advances.-

(a) Once the Board of Directors of COFIM implements and enforces the provisions of Section 3 of this Act and to prevent a deficit in the cash flow of the municipalities during each fiscal year until the Municipal Transfer begins to nourish the general funds of municipalities, any municipality, except for those that have availed themselves of the option provided in Section 4 of the ‘Municipal Administration Fund Act,’ may request an advance to the GDB on a monthly basis, to be distributed during the first ten (10) days of each month, in an amount equal to the difference between:

(1) The revenues from the one percent (1%) municipal SUT collected by such municipality in the corresponding month of the immediately preceding year (such amount shall be increased by advances from the Municipal Development Fund and the Redemption Fund, insofar as such additional amount

does not exceed the amount corresponding to such municipality based on the same month of the immediately preceding year) and

(2) ...

(b) As for municipalities that avail themselves of the option provided in Section 4 of the ‘Municipal Administration Fund Act,’ and once the Board of Directors of COFIM implements and enforces the provisions of Section 3 of this Act, the GDB shall make an advance to be distributed during the first ten (10) days of the corresponding month. The amount advanced shall consist of the surplus of the specific months of the semester in which the Board of Directors of COFIM authorizes the implementation of pertinent provisions. Beginning on the next semester of Fiscal Year 2014-2015, the GDB shall make an advance to be distributed within the first ten (10) days of January (corresponding to the January-June period) and in July (corresponding to the July-December period) and in the subsequent fiscal years, which shall receive the same treatment, in an amount equal to the revenues from the one percent (1%) municipal SUT collected by such municipality for the corresponding periods of the preceding year (July to December and January to June). The GDB is hereby required and authorized to make such advances in accordance with this Section.

(c) ...”

Section 7.- Current Sections 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Act No. 19-2014 are hereby renumbered as 7, 8, 9, 10, 11, 12, 13, 14, and 15, respectively.

Section 8.- Severability Clause.-

If any paragraph, subsection, clause, subparagraph, or part of this Act were held to be null or unconstitutional by a competent court said holding shall not affect, impair, or invalidate the remaining provisions of this Act.

Section 9.- Effectiveness.-

This Act shall take effect immediately after its approval.