

(H.B. 2186)

(No. 103)

(Approved July 19, 2002)

AN ACT

To amend Section 3 and to amend subsection (a), subsection (b) and subsection (e) and redesignate the second subsection (e) as the new subsection (f) of Section 15 of Act No. 173 of July 30, 1999, as amended, better known as the “Children’s Trust Act,” in order to broaden the definitions of said Act, set forth the commitment of the Commonwealth of Puerto Rico to comply with the bond obligations of the Master Settlement Agreement and with the Model Statute to be approved by the plaintiffs who are parties to said Agreement and to eliminate the restriction established in order to be able to pledge, assign or sell the funds received.

STATEMENT OF MOTIVES

The purpose of Act No. 173 of July 30, 1999, as amended, known as the “Children’s Trust Act” is to allow the People of Puerto Rico to benefit from the funds proceeding from the Master Settlement Agreement established between the States and the tobacco industry. This purpose is achieved through the sponsoring and financing of activities directed to improve the quality of life and the full and comprehensive development of all Puerto Rican citizens.

The Board of Directors of the Children’s Trust is the entity entrusted to execute the aforementioned public policy through the powers, faculties and obligations conferred to said Body by the law itself, in order to propitiate the best use of the funds proceeding from the Master Settlement Agreement.

Therefore, it is necessary that the Board of Directors of the Children's Trust be enabled to effectively exercise its function of evaluating the use of the funds to be received, as well as the activities and projects to be undertaken with said funds. This power must be broadened so that the obligations these activities generate may be met through the financing means determined by the Board of Directors, with the advice of the Government Development Bank for Puerto Rico, in its function as fiscal agent and financial advisor.

With the approval of this measure, this Legislature seeks to grant greater flexibility to the Board of Directors of the Children's Trust. To achieve this purpose, it is necessary to broaden the definition for "Trust Projects" as set forth in said Act. Thus, the restriction established regarding the power of the Trust to pledge, assign or sell the funds received in any year is hereby eliminated, so as to take full advantage of the benefits the People of Puerto Rico shall receive by virtue of the Master Settlement Agreement, so that these benefits may be available to achieve the full and comprehensive development of our citizens and their quality of life.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Section 3 of Act No. 173 of July 30, 1999, as amended, is hereby amended to read as follows:

“Section 3.—Definitions

The following terms, whenever used or mentioned in this Act, shall have the meaning stated below, except when the context clearly indicates otherwise:

(a) ...

...

(j) ‘Trust Projects’ shall mean all those government and private works, programs and initiatives whose direct or indirect impact has or has had a positive effect on the welfare of the citizens, their quality of life and the full and comprehensive development of the citizens.”

Section 2.—Subsection (a), subsection (b) and subsection (e) are hereby amended and the second subsection (e) is redesignated as the new subsection (f) of Section 15 of Act No. 173 of July 30, 1999, as amended, to read as follows:

“Section 15.—Financing

(a) Financing Powers.—The Trust may negotiate and execute contracts, leases and all those other necessary or convenient instruments and agreements with any person, in order to exercise the powers and functions conferred upon the Trust by this Act. The Trust may also mortgage or pledge any property to pay the principal and the interest on any bonds issued by the Trust or bonds issued by a Benefited Entity, and pledge all or part of the revenues the Trust may receive, including, but not limited to, the funds proceeding from the Settlement Agreement.

All revenues or any other moneys deposited in the Trust, including any payment received or to be received in the future by the Trust as part of the Settlement Agreement, shall be first applied to the payment of the principal of, and the premium, if any, and the interest on any bond or obligation issued by or in behalf of the Trust according to the provisions of this Act, and then in effect.

(b) Trust Bonds.—The Trust is hereby authorized to issue bonds from time to time for such principal amounts which in the opinion of the Trust are needed to provide sufficient funds to finance the activities, purposes or ends of the Trust, including, but not limited to, all expenses for the development

and design of infrastructure destined to the Trust Projects, to repay obligations of, or provide financial assistance to the Commonwealth of Puerto Rico and its public corporations and instrumentalities that provide the infrastructure for the Trust Projects, to pay interest on its bonds for the period determined by the Trust, and to pay such other expenses of the Trust or of those Benefited Entities, including, but not limited to, working capital, which are incidental, necessary or convenient to achieve its corporate purposes and powers, and to pay any expenses for the issue of, and establish reserves to secure, said bonds. The Trust may also issue bonds to acquire obligations of any Benefited Entity. Without it being construed as a limitation, the product of the bonds may be applied to any expenses or purposes for which the product of the obligations of any Benefited Entity may be disbursed or, in those cases in which the Trust provides financing, in lieu of a public corporation or instrumentality of the Commonwealth of Puerto Rico, the Trust may apply the product of the bonds to any expenses or purposes for which the product of the obligations of said government entity could have been legally applied with regard to the projects.

(1) The bonds issued by the Trust may be made payable from the total or part of the gross or net revenues and from other revenues derived by the Trust which may include the product of funds proceeding from the Settlement Agreement made available to the Trust, all as provided in the Trust contract or resolution under which the bonds are issued. The principal of, and interest on the bonds issued by the Trust may be secured by pledging any Trust revenues, which may include the product of the funds proceeding from the Settlement Agreement made available to the Trust, all as provided in the Trust contract or resolution under which the bonds are issued. Said pledge shall be valid and binding as of

the moment it is made without the need of a public or notarized document. The revenues thus pledged, including those which the Trust receives subsequently, shall be immediately subject to said pledge without the need of the physical delivery thereof or of any other action, and said pledge shall be valid and binding and shall prevail against any third party having a claim of any kind for damages, breach of contract or other motive against the Trust, regardless of whether said third party has not been notified to that effect. Neither the Trust contract or resolution, nor any collateral contract by means of which the rights of the Trust on any revenues are pledged or assigned shall have to be presented or registered to formalize the pledge on the same against any third party, except in the files of the Trust. The resolution or resolutions authorizing the bond issue or the Trust contract securing the same, may contain provisions which shall be part of the contract with the holders of the bonds issued under said resolution or resolutions or under said Trust contract with respect to the security and creation of pledges on the revenues and assets of the Trust, the creation and maintenance of redemption and reserve funds, the limitations regarding the purposes for which the proceeds of the bonds may be used, the limitations regarding the issue of additional bonds, and the limitations as to the introduction of amendments or supplements to the resolution or resolutions or to the Trust contract, as well as to the granting of rights, powers and privileges and to the imposition of obligations and responsibilities to the trustee under any Trust contract or resolution, and the rights, powers, obligations and responsibilities which shall arise in the event of the noncompliance of any obligation under said resolution or resolutions or under said Trust contract, or regarding any rights, powers or privileges

conferred on the bondholders as security on the same, to increase their attractiveness for the sale of the bonds.

(2) ...

(3) ...

(4) ...

(c) ...

(d) ...

(e) **Covenant of the Government of Puerto Rico.**—The Government of the Commonwealth of Puerto Rico is committed to and agrees with the holders of any bonds issued under this Act and with the persons and entities that enter into contracts with the Trust pursuant to the provisions of this Act, that:

(i) it shall irrevocably order the escrow agent under the Master Settlement Agreement to transfer the totality or part of the payments assigned to the Trust according to the provisions of subsection (a) of this Section 15, directly in favor of the Trust or its assignee to insure the payment of the bonds;

(ii) it shall defend the rights of the Trust to receive said payments up to the maximum allowed by the Master Settlement Agreement;

(iii) it shall ensure that the Model Statute, as defined in the Global Settlement Agreement, be diligently complied with;

(iv) it shall not amend the Master Settlement Agreement in a way that may materially alter the rights of the bondholders or of those persons and entities that enter into contracts with the Trust;

(v) it shall not limit or alter the rights of the Trust to meet the terms of its agreements with said bondholders or with contracting persons or entities; and

(vi) it shall not limit or alter the rights hereby conferred to the Trust until said bonds and the interest thereon have been fully satisfied and said contracts have been totally complied with and honored by the Trust. The Trust, in its capacity as the agent of the Commonwealth of Puerto Rico, is hereby authorized to include this promise of the Commonwealth of Puerto Rico in said bonds or contracts.

(f) Bonds, Lawful Investments and Collateral for Deposits.—The Trust bonds shall constitute lawful investments and may be accepted as collateral for fiduciary, trust and public funds, whose investment or deposit is under the authority or the control of the Commonwealth of Puerto Rico or of any official or officials thereof.”

Section 3.—This Act shall take effect immediately after its approval.

August 12, 2002

Elba Rosa Rodríguez-Fuentes, Esq., Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that she has duly compared the English and Spanish texts of Act No. 103 (H.B.) of the 3th Session of the 14th Legislature of Puerto Rico, entitled:

AN ACT to amend Section 3 and subsection (a), subsection (b) and subsection (e) and redesignate the second subsection (e) as a new subsection (f) of Section 15 of Act No. 173 of July 30, 1999, as amended, better known as the "Children's Trust Act", in order to extend to the definitions of said Act, set forth the commitment of the Commonwealth of Puerto Rico to comply with the bond obligations of the Global Settlement Agreement and with the Model Statute to be approved by the plaintiffs who participated in said Agreement and to eliminate the restriction established in order to be able to pledge, assign or sell the funds received,

and finds the same are complete, true and correct versions of each other.

Elba Rosa Rodríguez-Fuentes