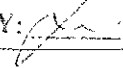


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SENATE

RECEIVED BY: 

COMMITTEE REPORT No. 15

Submitted jointly by the Committees on Finance and Government Corporations and Public Enterprises on JAN 10 2011.

Re: Senate Bill No. 2640

Recommending its approval in substitution of Senate Bill No. 2566, taking into consideration Senate Bill No. 2580 and P.S. Res. Nos. 61, 66 and 88.

Sponsor: Senator Drilon

Mr. PRESIDENT:

The Committees on Finance and Government Corporations and Public Enterprises to which were referred Senate Bill No. 2566, introduced by Senators Franklin M. Drilon and Edgardo J. Angara, entitled:

**"AN ACT
TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE
IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS
AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS
GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE
RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST
AND FOR OTHER PURPOSES"**

taking into consideration Senate Bill No. 2580, introduced by Senator Ralph G. Recto, entitled:

**"AN ACT
TO ENSURE THE ACCOUNTABILITY OF GOVERNMENT-OWNED
OR CONTROLLED CORPORATIONS, GOVERNMENT FINANCIAL
INSTITUTIONS, AND OTHER SIMILAR AGENCIES IN THE PUBLIC
SECTOR BY REQUIRING THESE ENTITIES TO BE EVALUATED
AND SUBJECTED TO THE TEST OF ECONOMIC AND FINANCIAL
VIABILITY, CREATING A CONGRESSIONAL OVERSIGHT
COMMITTEE, AND FOR OTHER PURPOSES"**

P.S. Res. No. 61, introduced by Senator Ralph G. Recto, entitled:

**"A RESOLUTION
DIRECTING THE SENATE COMMITTEE ON GOVERNMENT
CORPORATIONS AND PUBLIC ENTERPRISES TO REQUEST ALL
GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS
(GOCCS) AND GOVERNMENT FINANCIAL INSTITUTIONS (GFIS),
IN AID OF LEGISLATION, TO SUBMIT TO THE COMMITTEE
THEIR RESPECTIVE ORGANIZATIONAL STRUCTURE,
INFORMATION ON COMPENSATION PACKAGE AND THE
LATEST FINANCIAL STATEMENT IN CONSONANCE WITH THE
GOVERNMENT'S POLICY OF FULL PUBLIC DISCLOSURE ON ALL
MATTERS THAT AFFECT THE PUBLIC INTEREST"**

P.S. Res. No. 66, introduced by Senator Franklin M. Drilon, entitled:

**"RESOLUTION
DIRECTING THE COMMITTEES ON FINANCE, AND
GOVERNMENT CORPORATIONS AND PUBLIC ENTERPRISES, TO
CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE
ALLEGED EXCESSIVE AND UNWARRANTED SALARIES,
ALLOWANCES, BONUSES, OTHER EMOLUMENTS AND PERKS OF
TOP OFFICIALS AND BOARD MEMBERS OF GOVERNMENT
OWNED AND CONTROLLED CORPORATIONS AS WELL AS
GOVERNMENT FINANCIAL INSTITUTIONS"**

and P.S. Res. No. 88, introduced by Senator Manny Villar, entitled:

**"RESOLUTION
DIRECTING THE COMMITTEES ON GOVERNMENT
CORPORATIONS AND PUBLIC ENTERPRISES AND FINANCE TO
CONDUCT AN INQUIRY IN AID OF LEGISLATION, ON THE
REPORTED EXCESSIVE SALARIES, ALLOWANCES AND OTHER
BENEFITS OF OFFICIALS OF GOVERNMENT OWNED AND
CONTROLLED CORPORATIONS AND GOVERNMENT FINANCIAL
INSTITUTIONS WITH THE END IN VIEW OF MEANINGFULLY
RATIONALIZING THE UTILIZATION OF GOVERNMENT FUNDS"**

have considered the same and have the honor to report them back to the Senate with the recommendation that the attached Senate Bill No. 2640, prepared by the Committees, entitled:

**"AN ACT
TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE
IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS
AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS
GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE
RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST
AND FOR OTHER PURPOSES"**


be approved in substitution of Senate Bill No. 2566, taking into consideration Senate Bill No. 2580 and P.S. Res. No. 61, 66 and 88 with Senators Drilon, Angara, Recto and Villar as authors thereof.

Respectfully Submitted:



RALPH G. RECTO

Chairman, Committee on Government Corporations and Public Enterprises; and Vice Chairman, Committee on Finance



FRANKLIN M. DRILON

Chairman, Committee on Finance; and Member, Committee on Government Corporations and Public Enterprises



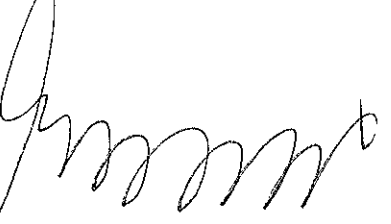
TEOFISTO L. GUINGONA III

Vice Chairman, Committee on Government Corporations and Public Enterprises; and Member, Committee on Finance



EDGARDO J. ANGARA

Vice Chairman, Committee on Finance



GREGORIO B. HONASAN II

Committee on Government Corporations and Public Enterprises; Committee on Finance

MIRIAM DEFENSOR SANTIAGO

Committee on Finance



LOREN B. LEGARDA

Committee on Government Corporations and Public Enterprises; Committee on Finance



FRANCIS "Chiz" G. Escudero

Committee on Finance



RAMON BONG REVILLA, Jr.

Committee on Government Corporations and Public Enterprises; Committee on Finance


MANUEL "Lito" L. LAPID

Committee on Finance



MANNY VILLAR

Committee on Government Corporations and Public Enterprises; Committee on Finance




FERDINAND R. MARCOS, Jr.

Committee on Finance

A. Ponce Enrile

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SERGIO R. OSMEÑA III
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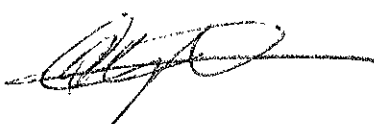

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FRANCIS N. PANGILINAN
Committee on Finance


JUAN MIGUEL F. ZUBIRI
Committee on Finance

Ex Officio Members:


JINGGOY EJERCITO ESTRADA
President Pro-Tempore

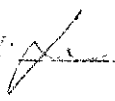

**ALAN PETER "Compañero" S.
CAYETANO**
Minority Leader


VICENTE C. SOTTO III
Chairman, Committee on Rules;
Majority Leader

Hon. JUAN PONCE ENRILE
President
Senate of the Philippines

11 JAN 18 P5:05

SENATE

RECEIVED BY: 

S. B. No. 2640

Prepared by the Committees on Finance and Government Corporations and
Public Enterprises with Senators Drilon, Angara, Recto and Villar as authors
thereof

**AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE
IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND
TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND
MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS
OF PUBLIC INTEREST AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress
assembled:*

CHAPTER I

General Provisions

SECTION 1. *Short Title.* - This Act shall be known as the "GOCC
Governance Act of 2011."

SECTION 2. *Declaration of Policy.* - The State recognizes the potential of
Government-Owned or Controlled Corporations (GOCCs) as significant tools for
economic development. It is thus the policy of the State to promote the growth of
the GOCCs by ensuring that their operations are consistent with national
development policies and programs.

Towards this end, the State shall ensure that:

- (a) The governance of GOCCs is carried out in a transparent, responsible and
accountable manner and with the utmost degree of professionalism and
effectiveness;

1
2 (b) A reporting system, which will require the periodic disclosure and
3 examination of the operations and management of the GOCCs, their
4 assets and finances, revenues and expenditures, is enforced,
5

6 (c) The governing board of every GOCC is competent to carry out its
7 functions, fully accountable to the State as its fiduciary, and acts in the
8 best interest of the State;
9

10 (d) Reasonable, justifiable and appropriate remuneration schemes are
11 adopted for the officers and employees of GOCCs to prevent or deter the
12 granting of unconscionable and excessive remuneration packages; and
13

14 (e) There is a clear separation between the regulatory and proprietary
15 activities of GOCCs, in order to achieve a level playing field with
16 corporations in the private sector performing similar commercial activities
17 for the public.
18

19 **SECTION 3. Definition of Terms. -**
20

21 (a) "Affiliate" refers to a corporation fifty percent (50%) or less of the
22 outstanding capital stock of which is owned or controlled, directly or
23 indirectly, by the GOCC.
24

25 (b) "Appointive Director" - refers to:

26 1. In the case of Chartered GOCCs, all members of its Board of
27 Directors/Trustees who are not *ex officio* members thereof; and

28 2. In the case of Non-chartered GOCCs, members of its Board of
29 Directors/Trustees whom the State is entitled to nominate, to the
30 extent of its percentage shareholdings in such GOCC.

31 3. In the case of subsidiaries and affiliates, members of its Board of
32 Directors/Trustees whom the GOCC is entitled to nominate to the
33 extent of its percentage shareholdings in such subsidiary or affiliate.
34

35 (c) "Board of Directors/Trustees" or "Board" refers to the governing body

1 that exercises the corporate powers of a GOCC.

2
3 (d) "Charter Statement" refers to a statement of the GOCC's vision, mission
4 and core values.

5
6 (e) "Chartered GOCC" refers to a GOCC, including Government Financial
7 Institutions, created and vested with functions by a special law.

8
9 (f) "Chief Executive Officer" refers to the President or the General Manager
10 or the Administrator of a GOCC.

11
12 (g) "Corporate Governance" refers to a set of principles and standards
13 derived from law, regulation and proper corporate practices that enables
14 the corporation to attract financial and human capital, perform
15 efficiently, and generate long-term and desirable economic value for the
16 State.

17
18 (h) "Department" refers to an executive department created by law for the
19 functional distribution of the work of the President.

20
21 (i) "Fit and Proper Rule" refers to the standard for determining whether a
22 member of the Board of Directors/Trustees or Chief Executive Officer
23 is fit and proper to hold a position in a GOCC, which shall include but
24 not be limited to, standards on integrity, experience, education, training,
25 and competence.

26
27 (j) "Government Agency" refers to any of the various units of the
28 Government of the Republic of the Philippines, including a department,
29 bureau, office, instrumentality, or GOCC, or a local government or a
30 distinct unit therein.

31
32 (k) "Government Instrumentalities with Corporate Powers (GICP)/
33 Government Corporate Entities (GCE)" refers to any instrumentality or
34 agency of the government, which is neither a corporation nor an agency
35 integrated within the departmental framework, but vested by law with

1 special functions or jurisdiction, endowed with some if not all corporate
2 powers, administering special funds, and enjoying operational
3 autonomy usually through a charter, including but not limited to the
4 following: Manila International Airport Authority (MIAA), the
5 Philippine Ports Authority (PPA), Philippine Deposit Insurance
6 Corporation (PDIC), Metropolitan Water and Sewerage Services
7 (MWSS), Philippine Rice Research Institute (PRRI), Laguna Lake
8 Development Authority (LLDA), Fisheries Development Authority
9 (FDA), Bases Conversion Development Authority (BCDA), Cebu Port
10 Authority (CPA), Cagayan de Oro Port Authority, San Fernando Port
11 Authority, Local Water Utilities Administration (LWUA), the Manila
12 Economic and Cultural Office (MECO) and the Asian Productivity
13 Organization (APO).

14
15 (l) "Government-Owned or Controlled Corporation (GOCC)" refers to any
16 agency organized as a stock or non-stock corporation, vested with
17 functions relating to public needs whether governmental or proprietary
18 in nature, and owned by the Government of the Republic of the
19 Philippines directly or through its instrumentalities either wholly, or,
20 where applicable as in the case of stock corporations, to the extent of at
21 least a majority of its outstanding capital stock: *Provided* However, That,
22 for purposes of this Act, the term "GOCC" shall include GICP/GCE as
23 defined herein.

24
25 (m) "Non-chartered GOCC" refers to a GOCC organized and operating
26 under Batas Pambansa Bilang 68, or The Corporation Code of the
27 Philippines.

28
29 (n) "Officer" refers to the corporate officer entrusted to manage the day to
30 day operations of the GOCC as provided in its charter or by-laws, such
31 as the Chief Executive Officer, President, Vice President, General
32 Manager, Treasurer, and Corporate Secretary.

33
34 (o) "Performance Scorecards" refers to a governance and management tool
35 consisting of a set of measures, targets and initiatives that facilitate the

1 achievement of breakthrough results and performance through the
2 effective and efficient monitoring and coordination of the strategic
3 objectives of the GOCC.

4
5 (p) "President" refers to the President of the Republic of the Philippines

6
7 (q) "Related Corporation" refers to a subsidiary or affiliate of a GOCC.

8
9 (r) "Secretary" refers to the person vested with the authority and
10 responsibility for the exercise of the mandate of the Department, for the
11 discharge of its powers and functions, and who shall have supervision
12 and control of the Department.

13
14 (s) "Strategy Map" refers to an integrated set of strategic choices or
15 objectives drawn by the governing body, the successful execution of
16 which results in the achievement of the GOCC's vision in relation to its
17 mission or purpose for having been created.

18
19 (t) "Subsidiary" refers to a corporation where at least a majority of the
20 outstanding capital stock is owned or controlled, directly or indirectly
21 through one or more intermediaries, by the GOCC.

22
23 **SECTION 4. Coverage.** - This Act shall be applicable to all GOCCs,
24 including all GICPs/GCEs as defined herein, excluding the Bangko Sentral ng
25 Pilipinas, which is a constitutionally-mandated independent agency, and the
26 local water districts.

27 28 29 **CHAPTER II**

30 **The Governance Commission for Government-Owned or Controlled** 31 **Corporations ("GCG")**

32
33 **SECTION 5. Creation of the Governance Commission for Government-Owned**
34 **or Controlled Corporations.** - There is hereby created an advisory, monitoring,
35 recommendatory, and policy-implementing body to be known as the

1 Governance Commission for Government-Owned or Controlled Corporations,
2 hereinafter referred to as the GCG, which shall be attached to the Office of the
3 President. The GCG shall have the following powers and functions.

4
5 a) Adopt within one hundred and eighty (180) days from its constitution, an
6 ownership and operations manual governing GOCCs. Said manual shall
7 be consistent with the Medium Term Philippine Development Plan and
8 shall include:

- 9 1. Objectives of State ownership;
- 10 2. Role of national government in the governance of GOCCs;
- 11 3. Modes of implementation of the ownership policy;
- 12 4. Guidelines on the monitoring of the operations of all GOCCs
13 including their Related Corporations. These shall include Strategy
14 Maps, Charter Statements, Performance Commitments and such
15 other mechanisms;
- 16 5. The roles, relationships and responsibilities of the State, the
17 Government Agencies to which the GOCC is attached, and the
18 GOCC;
- 19 6. Disclosure and transparency requirements;
- 20 7. *Code of Ethics of Directors and Officers*;
- 21 8. Creation of board committees and similar oversight bodies;
- 22 9. Integrated corporate reporting system;
- 23 10. Statement of the social responsibilities of the GOCC; and
- 24 11. Such other matters as the GCG may deem proper to include in the
25 ownership policy.

26
27 b) In addition to the qualifications required under the individual charter of
28 the GOCCs, the GCG shall identify other necessary skills and
29 qualifications required for Appointive Directors and recommend to the
30 President a shortlist of suitable and qualified candidates for Appointive
31 Directors;

32
33 c) Conduct periodic study, evaluation and assessment of the performance of
34 the GOCCs, receive, and in appropriate cases, require reports on the

1 operations and management of the GOCCs, including but not limited to
2 the management of the assets and finances of the GOCCs;

3
4 d) Evaluate the performance and determine the relevance of the GOCC, and
5 recommend to the President the reorganization, merging, streamlining,
6 abolition or privatization of a GOCC. For this purpose, the GCG shall be
7 guided by the following.

- 8
- 9 1. The functions or purpose for which the GOCC was created are no
10 longer relevant to the State or no longer consistent with the national
11 development policy of the State;
 - 12 2. The GOCC's functions or purpose duplicate or unnecessarily overlap
13 with functions, programs, activities or projects already provided by a
14 Government Agency;
 - 15 3. The GOCC is not producing the desired outcomes, or no longer
16 achieving the objectives and purposes for which it was originally
17 designed and implemented, and/or not cost efficient and does not
18 generate the level of social, physical and economic returns vis-à-vis the
19 resource inputs; and
 - 20 4. The GOCC is in fact dormant or non-operational for at least one (1)
21 year.

22
23 Upon determination by the GCG that it is to the best interest of the State
24 that a GOCC should be reorganized, merged, streamlined, abolished, or
25 privatized, it shall make its recommendation to the President. The
26 President may, upon confirmation of the findings of the GCG, order the
27 reorganization, merging, streamlining, abolition or privatization of such
28 GOCC.

29
30 The order for any such reorganization, merger, streamlining, abolition or
31 privatization, as recommended by the GCG, must be issued by the
32 President on or before June 30, 2015. Any such reorganization, merger,
33 streamlining, abolition or privatization must be completed within ninety
34 (90) days from the issuance by the President of the order to reorganize,
35 merge, streamline, abolish or privatize.

- 1
- 2 e) Conduct compensation studies, develop and recommend to the President
- 3 a competitive compensation and remuneration system which shall attract
- 4 and retain talent, at the same time allowing the GOCC to be financially
- 5 sound and sustainable;
- 6
- 7 f) Provide technical advice and assistance to the Government Agencies to
- 8 which the GOCCs are attached in setting performance objectives and
- 9 targets for the GOCCs and in monitoring GOCCs performance vis-a-vis
- 10 set objectives and targets;
- 11
- 12 g) Coordinate and monitor the operations of GOCCs, ensuring alignment
- 13 and consistency with the national development policies and programs. It
- 14 shall meet at least quarterly to:
- 15
- 16 1) Review Strategy Maps and Performance Scorecards of all GOCCs;
- 17 2) Review and assess existing performance-related policies including the
- 18 compensation/remuneration of Board of Directors/Trustees and
- 19 Officers and recommend appropriate revisions and actions; and
- 20 3) Prepare performance reports of the GOCCs for submission to the
- 21 President.
- 22
- 23 h) Prepare a semi-annual progress report to be submitted to the President
- 24 and the Congress. In its report, the GCG will provide its performance
- 25 assessment of the GOCCs and recommend clear and specific actions.
- 26 Within one hundred twenty (120) days from the close of the year, the GCG
- 27 shall prepare an annual report on the performance of the GOCCs and
- 28 submit it to the President and the Congress; and
- 29
- 30 i) Review the functions of each of the GOCC and, upon determination that
- 31 there is a conflict between the regulatory and commercial functions of a
- 32 GOCC, recommend to the President and to the Government Agency to
- 33 which such GOCC is attached, a plan of action to ensure that the
- 34 commercial functions of the GOCC do not conflict with such regulatory
- 35 functions.

1
2 **SECTION 6.** *Composition of the GCG* - The GCG shall be composed of five
3 (5) members with the Secretary of the Department of Budget and Management
4 (DBM) as *ex officio* Chairman, and the Secretary of the Department of Finance
5 (DOF) and the Director-General of the National Economic Development
6 Authority (NEDA) as *ex officio* members, and two (2) representatives from the
7 private sector as appointive members of the GCG.

8
9 The two (2) representatives from the private sector shall be appointed by
10 the President, upon the joint recommendation of the DBM, DOF and the NEDA
11 from a list of at least four (4) nominees. They must be citizens of the Philippines
12 with recognized competence in the areas of corporate governance, policy
13 administration, business management, human resources management, financial
14 management and other related fields. They shall serve as GCG members for a
15 term of three (3) years, without reappointment: *Provided*, That of the
16 representatives from the private sector first appointed, one (1) shall serve for two
17 (2) years, and one (1) shall serve for three (3) years, and thereafter every
18 representative so appointed shall serve for three (3) years.

19
20 **SECTION 7.** *Remuneration of Members of the GCG*. - The members of the
21 GCG shall not receive any compensation or remuneration for their services as
22 such, except for members representing the private sector who may receive
23 reasonable *per diems* for actual attendance in meetings of the GCG: *Provided*, That
24 *per diems* payable to the members of the GCG shall be approved by the President.

25
26 **SECTION 8.** *The GCG Secretariat*. - The GCG shall maintain a full-time
27 technical secretariat. Within ninety days (90) from the effectivity of this Act, the
28 GCG shall present to the President the staffing requirement, organizational
29 structure and budget requirements of the GCG Secretariat.

30
31 **SECTION 9.** *Managing Director*. - The management of the GCG Secretariat
32 shall be vested in the Managing Director who shall be a citizen of the Philippines
33 with known integrity, independence and recognized competence in the areas of
34 corporate governance, policy administration, business management, human
35 resources management and/or financial management and who has not been

1 convicted of any act involving violation of The Corporation Code of the
2 Philippines, The Securities Regulation Code (Republic Act No. 8799) or any
3 other offense involving moral turpitude.

4
5 The Managing Director shall be appointed by the President from a list of
6 at least five (5) nominees, upon the recommendation of the GCG.

7
8 The Managing Director shall have the rank of a Cabinet Undersecretary:
9 *Provided*, That the Managing Director may receive such allowances and bonuses
10 as determined by the GCG and approved by the President, giving due
11 consideration to his overall performance and the performance of the GCG.

12
13 **SECTION 10.** *Powers and Duties of the Managing Director.* – The Managing
14 Director shall have the following powers and duties:

- 15
- 16 (a) Direct and manage the day-to-day affairs and business of the GCG
17 Secretariat, subject to the control and supervision of the GCG;
 - 18 (b) Attend all meetings of the GCG and participate in its deliberations,
 - 19 (c) With the approval of the GCG, determine the staffing pattern and the
20 number of personnel of the GCG Secretariat and define their powers
21 and duties;
 - 22 (d) With the approval of the GCG, to appoint, remove, suspend, or
23 otherwise discipline, for cause, any employee of the GCG Secretariat;
24 and
 - 25 (e) Perform such other duties as may be delegated or assigned to him by
26 the Chairman of the GCG from time to time.
- 27
28

29 **CHAPTER III**

30 **Compensation and Position Classification System for GOCCs**

31
32 **SECTION 11.** *Coverage of the Compensation and Position Classification System*
33 – The GCG, after conducting a compensation study, shall develop a
34 Compensation and Position Classification System which shall apply to all officers
35 and employees of the GOCCs whether under the Salary Standardization Law or

1 exempt therefrom and shall consist of classes of positions grouped into such
2 categories as the GCG may determine, subject to the approval of the President.

3
4 **SECTION 12.** *Position Titles and Salary Grades.* - All positions in the
5 Position Classification System, as determined by the GCG and as approved by
6 the President, shall be allocated to their proper position titles and salary grades
7 in accordance with an Index of Occupational Services, Position Titles and Salary
8 Grades of the Compensation and Position Classification System, which shall be
9 prepared by the GCG and approved by the President.

10
11 The following principles shall govern the Compensation and Position
12 Classification System:

13
14 (a) All GOCC personnel shall be paid just and equitable wages in
15 accordance with the principle of equal pay for work of equal value.
16 Differences in pay shall be based on verifiable Compensation and
17 Position Classification factors in due regard to the financial capability
18 of the government.

19 (b) Basic compensation for all personnel in the GOCC shall generally be
20 comparable with those in the private sector doing comparable work,
21 and must be in accordance with prevailing laws on minimum wages.
22 The total compensation provided for GOCC personnel shall be
23 maintained at a reasonable level with due regard to the national
24 budget.

25 (c) A review of the GOCC compensation rates, taking into account the
26 performance of the GOCC, its overall contribution to the national
27 economy and the possible erosion in purchasing power due to
28 inflation and other factors, shall be conducted periodically.

29
30 No GOCC shall be exempt from the coverage of the Compensation and
31 Position Classification System developed by the GCG under this Act.

32
33 **SECTION 13.** *Additional allowances and bonuses.* - The GCG may
34 recommend, subject to the approval of the President, additional allowances or
35 bonuses for certain position titles, giving due consideration to the necessity for

1 such allowances and the good performance of the GOCC: *Provided*, That no
2 bonuses or additional allowances shall be granted unless the GOCC has fully
3 paid all taxes for which it is liable, and the GOCC has declared and paid all the
4 dividends required to be paid under its charter or any other laws.

5
6 **SECTION 14.** *Non-diminution of salaries.* - The Compensation and Position
7 Classification System to be developed and recommended by the GCG and as
8 approved by the President shall apply to all positions, on full or part-time basis,
9 now existing or hereafter created in the GOCC: *Provided*, That in no case shall
10 there be any diminution in the salaries of incumbent employees of GOCCs,
11 including those exempt under Republic Act No 6758, as amended, upon the
12 implementation of the Compensation and Position Classification System for
13 GOCCs.

14 15 16 **CHAPTER IV**

17 **Board of Directors/Trustees/Officers**

18 **Of Government-Owned or Controlled Corporations**

19
20 **SECTION 15.** *Coverage.* - The duties, obligations, responsibilities and
21 standards of care provided under this Chapter shall be applicable to all members
22 of the Board of Directors/Trustees and Officers of GOCCs now existing or
23 hereafter created. These duties, obligations, responsibilities shall be in addition to
24 the powers and functions provided in the individual charters or articles of
25 incorporation and by-laws of their respective GOCCs.

26
27 **SECTION 16.** *Number of Directors/Trustees.* - The present number of
28 Directors/Trustees provided in the charter of the GOCCs shall be maintained.

29
30 **SECTION 17.** *Ex officio alternates* - The *ex officio* members of the GOCC
31 may designate their respective alternates who shall be the officials next in rank to
32 them, and whose acts shall be considered the acts of their principals.

1 **SECTION 18.** *Appointment of the Board of Directors/Trustees of GOCCs.* – An
2 Appointive Director shall be appointed by the President of the Philippines from
3 a shortlist prepared by the GCG.
4

5 The GCG shall formulate its rules and criteria in the selection and
6 nomination of prospective appointees: *Provided, However,* That all nominees
7 included in the list submitted by the GCG to the President shall meet the Fit and
8 Proper test as defined under this Act and such other qualifications which the
9 GCG may determine taking into consideration the unique requirements of each
10 GOCC. No person who is not included in the shortlist prepared by the GCG
11 may become an Appointive Director: *Provided,* That the GCG shall ensure that
12 the shortlist shall exceed by at least fifty percent (50%) of the number of
13 directors/trustees to be appointed: *Provided, Further,* That in the event that the
14 President does not see fit to appoint any of the nominees included in the
15 shortlist, he shall ask the GCG to submit additional nominees.
16

17 **SECTION 19.** *Fit and Proper.* – All members of the Board and the Chief
18 Executive Officer shall be qualified by the “fit and proper” test to be determined
19 by the GCG in consultation and coordination with the relevant government
20 agencies to which the GOCC is attached and approved by the President.
21

22 To maintain the quality of management of the GOCCs, the GCG, in
23 coordination with the relevant Government Agencies, shall, subject to the
24 approval of the President, prescribe, pass upon and review the qualifications and
25 disqualifications of individuals appointed as directors or elected Chief Executive
26 Officer of the GOCC and shall disqualify those found unfit
27

28 In determining whether an individual is fit and proper to hold the
29 position of a director or Chief Executive Officer of the GOCC, due regard shall be
30 given to his integrity, experience, education, training and competence.
31

32 **SECTION 20.** *Term of Office.* – The charters of each GOCC to the contrary
33 notwithstanding, the term of office of each Appointive Director shall be one (1)
34 year. An Appointive Director may be nominated by the GCG for re-appointment
35 by the President only if he/she obtains a performance score of above average or

1 its equivalent or higher in the immediately preceding year of his/her tenure as
2 Appointive Director based on the performance criteria for Appointive Directors
3 for the GOCC.

4
5 Appointment to any vacancy shall be only for the unexpired term of the
6 predecessor. The appointment of a director to fill such vacancy shall be in
7 accordance with the manner provided in Section 18 of this Act.

8
9 Any provision of law to the contrary notwithstanding, all incumbent
10 CEOs and members of the Board of GOCCs shall, upon approval of this Act,
11 have a term of office until July 1, 2011 or until their successors shall have been
12 appointed, or unless sooner replaced by the President.

13
14 **SECTION 21.** *The Chief Executive Officer of the GOCC.* – The Chief
15 Executive Officer (CEO) or the highest-ranking officer provided in the charters of
16 the GOCCs, shall be elected annually by the members of the Board from among
17 its ranks, or from a shortlist of qualified candidates submitted by the GCG. The
18 CEO shall be subject to the disciplinary powers of the Board and may be
19 removed by the Board for cause.

20
21 **SECTION 22.** *Fiduciary Duties of the Board and Officers.* – As fiduciaries of
22 the State, members of the Board of Directors/Trustees and the Officers of GOCCs
23 have the legal obligation and duty to always act in the best interest of the GOCC,
24 with utmost good faith in all its dealings with the property and monies of the
25 GOCC.

26
27 The members of the Board and Officers of GOCCs shall:

- 28
29 1. Act with utmost and undivided loyalty to the GOCC;
30 2. Act with due care, extraordinary diligence, skill and good faith in the
31 conduct of the business of the GOCC;
32 3. Avoid conflicts of interest and declare any interest they may have in any
33 particular matter before the Board;
34 4. Apply sound business principles to ensure the financial soundness of the
35 GOCC; and

1 5. Elect and/or employ only Officers who are fit and proper to hold such
2 office with due regard to their qualifications, competence, experience, and
3 integrity.
4

5 Where a member of the Board or an Officer, by virtue of his office,
6 acquires or receives for himself a benefit or profit, of whatever kind or nature
7 including but not limited to the acquisition of shares in corporations where the
8 GOCC has an interest, using the properties of the GOCC for their own benefit,
9 receiving commission on contracts from the GOCC's assets, or taking advantage
10 of corporate opportunities of the GOCC, all such profits or benefits shall be
11 subject to restitution under Section 27 of this Act, without prejudice to any
12 administrative, civil or criminal action against members of the Board of
13 Directors/Trustees or Officers. This provision shall be applicable
14 notwithstanding the fact that such member of the Board or Officer risked his
15 own funds in the venture.
16

17 **SECTION 23.** *Trustee Relation to the Properties, Interests and Monies of the*
18 *GOCC.* - Except for the *per diem* received for actual attendance in board meetings
19 and the reimbursement for actual and reasonable transportation expenses and
20 bonuses within the limits authorized by the GCG, any and all realized profits
21 and/or benefits, including, but not limited to the share in the profits, bonuses of
22 members of the Board or Officers in excess of that authorized by the GCG, stock
23 options, dividends and other similar offers or grants from corporations where
24 the GOCC is a stockholder or investor, and any benefit from the performance of
25 members of the Board or Officers of the Corporation acting for and in behalf of
26 the GOCC in dealing with its properties, investments in other corporations,
27 management of subsidiaries and other interest, are to be held in trust by such
28 member of the Board or Officer for the GOCC they represent.
29

30 **SECTION 24.** *Care, Diligence and Skill in the Conduct of the Business of the*
31 *GOCC.* - The members of the Board and the Officers must exercise extraordinary
32 diligence in the conduct of the business and in dealing with the properties of the
33 GOCC. Such degree of diligence requires using the utmost diligence of very
34 cautious person with due regard for all the circumstances.
35

1 **SECTION 25.** *Power of Board of Directors/Trustees to Discipline, Remove*
2 *Officers of GOCC.* – Subject to existing civil service laws, rules and regulations,
3 the Board shall have the authority to discipline the Chief Executive Officer, or
4 order his removal from office, upon a majority vote of the members of the Board
5 who actually took part in the investigation and deliberation.
6

7 **SECTION 26.** *Limits to Per Diems, Allowances and Bonuses.* – The charters of
8 each of the GOCCs to the contrary notwithstanding, the members of the Board of
9 Directors/Trustees of the GOCCs shall not receive any compensation nor be
10 entitled to retirement benefits as such directors. Except for those who sit in the
11 Board in their *ex officio* capacities, members of the Board shall, however, be
12 entitled to reasonable *per diems*: *Provided*, That the same is authorized under the
13 charter or the by-laws of the GOCC: *Provided, Further*, That such
14 Directors/Trustees may be entitled to bonuses equivalent to not more than two
15 (2) months salary of the CEO of the GOCC, based on their individual and the
16 GOCC's performance: *Provided, Finally*, That any bonus in excess of this limit
17 shall be subject to the approval of the President.
18

19 In case of GOCCs organized solely for the promotion of social welfare and
20 the common good without regard to profit, the total yearly *per diems* and bonuses
21 in the aggregate which the members of the Board of such GOCCs may receive
22 shall be determined by the President based on the achievement by such GOCC of
23 its performance targets.
24

25 **SECTION 27.** *Restitution.*— Upon the determination and report of the
26 Commission on Audit (COA) that properties or monies belonging to the GOCC
27 are in the possession of a member of the Board or Officer without authority, or
28 that profits are earned by the member of the Board or Officer in violation of
29 his/her fiduciary duty, or the aggregate *per diems*, allowances and bonuses
30 received in a particular year are in excess of the limits provided under this Act,
31 the member of the Board or Officer receiving such properties or monies shall
32 return the same to the GOCC.
33

34 Failure to make the restitution, after a written demand has been served,
35 shall be punished with an imprisonment of one (1) year and a fine equivalent to

1 twice the amount to be restituted, and in the discretion of the court of competent
2 jurisdiction, disqualification to hold public office.

3 4 5 **CHAPTER V**

6 **Creation of a new GOCC or Related Corporation**

7
8 **SECTION 28.** *Requisites for the Creation of a new GOCC or Related*
9 *Corporation under The Corporation Code.* - A Government Agency seeking to
10 establish a GOCC or Related Corporation under The Corporation Code of the
11 Philippines shall submit its proposal to the GCG for review and recommendation
12 to the President for his approval before registering the same with the Securities
13 and Exchange Commission (SEC). The SEC shall not register the articles of
14 incorporation and by-laws of a proposed GOCC or Related Corporation, unless
15 the application for registration is accompanied by an endorsement from the GCG
16 stating that the President has approved the same.

17 18 19 **CHAPTER VI**

20 **Miscellaneous Provisions**

21
22 **SECTION 29.** *Appropriations.* - The amount of Ten Million Pesos
23 (P10,000,000.00) for the initial operation of the GCG shall be sourced from the
24 Contingent Fund of the President. Subsequent funding requirements shall be
25 included in the annual General Appropriations Act

26
27 **SECTION 30.** *Suppletory Application of The Corporation Code and Charters of*
28 *the GOCCs.* - The provisions of The Corporation Code of the Philippines and the
29 provisions of the charters of the relevant GOCC, insofar as they are not
30 inconsistent with the provisions of this Act, shall apply suppletorily to GOCCs.

31
32 **SECTION 31.** *Repealing Clause.* - The charters of the GOCCs under
33 existing laws and all other laws, executive orders, administrative orders, rules,
34 regulations, decrees, and other issuances or parts thereof, which are inconsistent
35 with the provisions of this Act, are hereby revoked, repealed or modified
36 accordingly.

1

2 **SECTION 32. *Separability Clause.*** – Should any provision of this Act be
3 declared unconstitutional, the same shall not affect the validity of the other
4 provisions of this Act

5

6 **SECTION 33. *Effectivity.*** – This Act shall take effect after fifteen (15) days
7 following its publication in the Official Gazette or in two (2) newspapers of
8 general circulation.

9

10 Approved,