

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

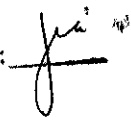


Senate
Office of the Secretary

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SENATE

Senate Bill No. 1286

RECEIVED BY: 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

Our aspiration for good governance and progressive nation requires a concerted effort from all stakeholders. The leaders and constituents alike should ensure that accountability and transparency are of utmost concern and any action or decision deviant from this should be squarely addressed.

This measure provides for the protection, security and benefits of whistleblowers, which is defined in this bill as *"any person who has personal knowledge or access to any data, information, fact or event constituting improper conduct; Provided, That such person must not have any direct participation in such improper conduct, or in cases where such person participated in any improper conduct, such person is not the most guilty and shall therefore qualify as a state witness against the persons subject of such disclosure."*

The "Whistleblower Protection Act of 2013" ensures the absolute confidentiality of the whistleblowers' identity, the subject matter of his/her disclosure, and the person to whom such disclosure has been made. Alongside with this, it provides for corresponding financial rewards for whistleblowers and proposes the establishment of the Congressional Whistleblower Program each within the Senate of the Philippines and the House of Representatives.

With the enactment of this bill, it is hoped that more qualified whistleblowers will come into fore to help our government unravel the diseases of our country's governance.

This bill was submitted by the Committees on Justice and Human Rights, and Finance during the Fifteenth Congress but was not passed into law.

The immediate passage of this bill is earnestly sought.


JINGGOY EJERCITO ESTRADA
Senator



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SENATE

Senate Bill No. 1286

RECEIVED BY: Jei

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

AN ACT
PROVIDING FOR PROTECTION, SECURITY AND BENEFITS OF
WHISTLEBLOWERS

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

1 **SECTION 1. Short Title.** – This Act shall be known as the “**Whistleblower**
2 **Protection Act of 2013**”.

3
4
5 **SEC. 2. Declaration of Policy.** – Public Office is a public trust. It is the policy of
6 the State to promote and ensure full accountability in the conduct of its officers
7 and employees, and exact full retribution from those who shall engage in
8 improper conduct. Towards this end, the State shall:

- 9
10 a) maintain honest and high standards of integrity in the public service;
11
12 b) safeguard the national interest through the prosecution of corrupt and
13 erring public officials and employees; and,
14
15 c) encourage and facilitate the disclosure of corrupt conduct and practices in
16 the public service by providing benefits provided in existing laws.
17

18
19 **SEC. 3. Definition of Terms.** – As used in this Act:

- 20
21 (a) “**Employer**” shall mean any individual, partnership, association,
22 corporation or entity, including the government, or any person or group of
23 persons who shall directly or indirectly for or on behalf of said individual,
24 partnership, association, corporation or entity, employ an employee as
25 defined in this Act;
26
27 (b) “**Employee**” shall mean any person who is made to work by, or who
28 renders service for, an employer. The term shall include public officers
29 and employees as defined in this Act as well as any person considered
30 an “employee” under the Labor Code;
31

- 1 (c) "**Public officer / employee**" shall refer to any person holding office or
2 performing any function or duty in the Government of the Republic of the
3 Philippines by virtue of an appointment, election or contract;
4
- 5 (d) "**Government**" shall include the National Government, and any of its
6 subdivisions, agencies or instrumentalities, including government-owned
7 and controlled corporations and their subsidiaries, and Local Government
8 Units;
9
- 10 (e) "**Retaliatory Action**" shall refer to any negative or obstructive response,
11 reaction or reprisal to a disclosure made under this Act aimed at,
12 pertaining to, or against a whistleblower or any of the members of his/her
13 family and relatives up to the fourth civil degree of consanguinity or
14 affinity. Said actions shall include criminal, civil or administrative
15 proceedings commenced or pursued against said whistleblower or any of
16 the members of his/her family or relatives up to the fourth civil degree of
17 consanguinity or affinity as well as any retaliatory action in the workplace;
18
- 19 (f) "**Retaliatory Action in the Workplace**" shall mean any discriminatory
20 conduct or policies which affect promotion or job assignment including
21 undue negative performance appraisal, close monitoring by supervisors,
22 unwarranted criticisms or avoidance by co-employees, blacklisting from
23 other job opportunities or prejudicial transfers by reason of a disclosure
24 made under this Act;
25
- 26 (g) "**Acts Constituting Improper Conduct**" shall mean any act or omission
27 of a public officer or employee solely, or in cooperation with, or with the
28 assistance of, private persons which is covered by or constitute a
29 violation of:
30
- 31 1. Presidential Decree No. 46 otherwise known as "Making it
32 punishable for Public Officials and Employees to Receive, and for
33 Private Persons to Give, Gifts on Any Occasion, Including
34 Christmas";
 - 35
 - 36 2. Republic Act No. 3019 otherwise known as "Anti-Graft and Corrupt
37 Practices Act";
 - 38
 - 39 3. Republic Act No. 6713 otherwise known as "An Act Establishing a
40 Code of Conduct and Ethical Standards for Public Officials and
41 Employees";
 - 42
 - 43 4. Republic Act No. 7080 otherwise known as the "Anti-Plunder Law";
 - 44
 - 45 5. Title VII of Book Two of the Revised Penal Code on Crimes
46 Committed by Public Officers; and,
 - 47
 - 48 6. All other laws which penalize or sanction any act or omission of a
49 public officer or employee.
 - 50
- 51 (h) "**Whistleblower**" shall refer to any person who has personal knowledge
52 or access to any data, information, fact or event constituting improper
53 conduct; *Provided*, That such person must not have any direct
54 participation in such improper conduct, or in cases where such person
55 participated in any improper conduct, such person is not the most guilty
56 and shall therefore qualify as a state witness against the persons subject
57 of such disclosure;

1
2 (i) "**Qualified Whistleblower**" shall mean a whistleblower qualified and
3 admitted into the Whistleblower's Program of the Implementing Agency in
4 accordance with this Act and its implementing rules and regulations;
5

6 (j) "**Implementing Agencies or Agency**" shall collectively or individually
7 refer to the Department of Justice (DOJ), the Office of the Ombudsman,
8 the Commission on Human Rights (CHR), and the Public Attorney's
9 Office (PAO);

10
11 (k) "**Whistleblower Council**" shall refer to the Council created and defined
12 under Section 31 of this Act.
13

14
15 **SEC. 4. Coverage.** – Notwithstanding the provisions of law on prescription of
16 crimes, this Act shall cover all acts constituting improper conduct irrespective of
17 the time of commission.
18

19
20 **SEC. 5. Admission / Qualification to the Program.** – Whistleblowers, whether
21 from the public or private sector, shall be entitled to the benefits under this Act;
22 *Provided*, That all the following requisites concur:
23

- 24 a) The disclosure is voluntary, in writing and under oath;
25 b) The disclosure relates to acts constituting improper conduct; and,
26 c) The information to be disclosed is admissible in evidence.
27

28
29 **SEC. 6. Necessity of Testimony.** – The testimony of a qualified whistleblower in
30 court shall not be necessary for the entitlement or enjoyment of the benefits of
31 this Act. In the event that the said whistleblower's testimony is required as found
32 by the Implementing Agency to be necessary and indispensable for a successful
33 prosecution of a case, he/she shall be entitled to the additional benefits and
34 protection under R.A. No. 6891 otherwise known as the Witness Protection
35 Program, funding for which shall be sourced from the budget as provided under
36 Section 32 hereof.
37

38
39 **SEC. 7. Credibility of a Whistleblower.** – In all cases, the fact of the entitlement
40 of the qualified whistleblower to the protection and benefits provided in this Act
41 shall not be admissible in evidence to diminish or affect his credibility.
42

43
44 **SEC. 8. Perpetuation of Testimony.** – Once admitted into the program, a
45 whistleblower may perpetuate his/her testimony pursuant to Rule 134 of the
46 Revised Rules of Court.
47

48
49 **SEC. 9. Memorandum of Agreement with the Person to be Protected.** – Before a
50 person is provided protection and benefits as a whistleblower for the State,
51 he/she shall first execute a *Memorandum of Agreement* with the Implementing
52 Agency which shall set forth his/her responsibilities as follows:
53

- 54 (a) To provide information to and testify before all branches or agencies of
55 government in an appropriate proceeding on facts constituting improper
56 conduct;
57

- 1 (b) To avoid commission of crime;
2
3 (c) To take all necessary precautions to preclude detection by others of the
4 facts concerning the protection provided him/her under this Act;
5
6 (d) To cooperate with all reasonable requests of officers and employees of
7 the government who are providing him/her protection under this Act; and,
8
9 (e) To regularly inform the Implementing Agency's program official concerned
10 of his/her current activities and address.
11

12
13 **SEC. 10. Breach of the Memorandum of Agreement.** – Substantial breach of the
14 *Memorandum of Agreement* provided for in Section 9 hereof shall be sufficient
15 ground for the termination of the protection and benefits provided under this Act;
16 *Provided, however,* That before terminating the same, the Implementing Agency
17 shall send notice to the qualified whistleblower concerned, stating therein the
18 reason for such termination.
19

20
21 **SEC. 11. Confidentiality.** – Except insofar as allowed by this Act, during and
22 after the disclosure, and throughout and after any proceedings taken thereafter, a
23 whistleblower is entitled to absolute confidentiality as to:
24

- 25 (a) his/her identity
26
27 (b) the subject matter of his/her disclosure; and,
28
29 (c) the person to whom such disclosure has been made.
30

31 There shall be no such confidentiality in his/her identity if a whistleblower makes
32 a public disclosure of acts constituting improper conduct unless, notwithstanding
33 such public disclosure, he/she has taken means obviously intended to preserve
34 his/her anonymity.
35

36
37 **SEC. 12. Confidential Information.** – No person to whom a disclosure has been
38 made or referred to shall divulge any information that may identify or tend to
39 identify a whistleblower or reveal the subject matter of such disclosure, except
40 only as to the following circumstances:
41

- 42 (a) the whistleblower consents in writing prior to such a disclosure of;
43
44 (b) the disclosure is indispensable and essential as determined by the
45 Implementing Agency, taking into consideration the necessary
46 proceedings to be had after said disclosure; or,
47
48 (c) the disclosure or referral is made pursuant to an obligation under this Act.
49 The prohibition on disclosure under this Section shall apply to any person
50 who has become privy to any confidential information, whether officially or
51 otherwise.
52
53

54 **SEC. 13. Violation of Confidentiality.** – Any person who shall violate the
55 protection of confidentiality of a protected disclosure under Sections 11 and 12 of
56 this Act, shall suffer the penalty of not more than one (1) year but not less than
57 six (6) months with the accessory penalty of temporary absolute disqualification

1 for public office, in case of a public officer or employee, and shall be civilly liable
2 to the whistleblower in such amount of damages as may be awarded and
3 deemed reasonable by the court.
4

5 The proceedings herein shall be independent of any action that an aggrieved
6 whistleblower may take before the Civil Service Commission or the Department
7 of Labor and Employment for unfair or discriminatory practices, back wages, or
8 other labor dispute, or before other quasi-judicial agencies that may or may not
9 have arisen from a disclosure, or a believed or suspected disclosure.
10

11
12 **SEC. 14. *No Breach of Duty of Confidentiality.*** – A whistleblower who has made
13 a disclosure under this Act on whom a provision of law, regulation, issuance,
14 practice or other convention, imposes upon him/her the duty to maintain
15 confidentiality with respect to any information disclosed is considered not to have
16 committed a breach thereof.
17

18
19 **SEC. 15. *Defense of Privileged Communication.*** – A whistleblower who has
20 made a disclosure under this Act shall have in any other inquiry or proceeding
21 the defense of absolute privileged communication with respect to the subject
22 matter of his/her disclosure or information given to the proper authorities.
23

24
25 **SEC. 16. *False and Misleading Disclosures.*** – Any person who deliberately and
26 voluntarily gives false or misleading information in connection with acts or
27 omissions constituting improper conduct shall be guilty of an offense punishable
28 by imprisonment of not more than two (2) years and perpetual absolute
29 disqualification from holding public office, in case of a public officer or employee,
30 without prejudice to other liabilities under existing laws.
31

32
33 **SEC. 17. *Protection against Disciplinary Action or Reprisals.*** – A whistleblower
34 who has made or is believed or suspected to have made a disclosure under this
35 Act is not liable to disciplinary action for making said disclosure.
36

37 Prohibited acts under this Section include retaliatory action in a workplace or
38 prejudicial conduct towards a whistleblower, such as: discriminatory actions
39 behind policies and procedures, reprimand, punitive transfers, unwarranted
40 referral to a psychiatrist or counselor, and undue poor performance reviews.
41 Other prejudicial conducts include obstruction of an investigation, withdrawal of
42 essential resources, undue reports and the attachment of unfair personnel file
43 notes.
44

45 To this end, any employer who has discouraged and imposed sanctions or
46 reprisals based on workplace interactions, which shall include workplace
47 ostracism, questions and attacks on motives, accusations of disloyalty and
48 dysfunction, public humiliation, and the denial of work or promotion, or who
49 encourages, causes or does retaliatory action or reprisal against a whistleblower,
50 or anyone believed or suspected to be one shall be liable for an offense defined
51 under this Act.
52

53 Any employee who refuses to follow orders of employers that would cause them
54 to violate any provision of this Act shall likewise be protected from reprisals and
55 retaliatory action in the workplace.
56

1 For purposes of this protection, an applicant for employment shall be deemed an
2 employee and entitled to such protection.

3
4 *Provided, however,* That an employer of a whistleblower shall be notified through
5 a certification issued by the Implementing Agency within a period of thirty (30)
6 days, from the date when the whistleblower last reported for work; *Provided*
7 *further,* That an employer shall have the option to remove said whistleblower
8 from employment after securing a clearance from the Civil Service Commission
9 and the Department of Labor and Employment, whichever the case may be, in
10 case of a prolonged absence due to transfer or permanent relocation under this
11 Act or R.A. No. 6891.

12
13
14 **SEC. 18. *Protection Against Other Actions.*** – A whistleblower who has made a
15 disclosure under this Act shall not be subject to any liability whether
16 administrative, civil, or criminal for making such a disclosure. No action, claim or
17 demand may be taken against a whistleblower for making such disclosure, nor
18 any evidence presented shall be used against him/her in court.

19
20 This protection shall also operate as an immunity in favor of a whistleblower
21 against any action or proceeding taken against him/her by reason of his/her
22 disclosure; *Provided, however,* That the whistleblower appears to be not the
23 most guilty.

24
25
26 **SEC. 19. *Discriminatory Hiring.*** – Any individual, firm, corporation, office or
27 employer who shall deny a qualified applicant of employment, or who shall reject
28 his/her application for employment solely on the ground that the applicant is or
29 will be a whistleblower, shall be guilty of an offense punishable by not more than
30 six (6) months imprisonment with the accessory penalty of suspension of the
31 right to hold public office, in case of a public officer or employee, and shall be
32 civilly liable to indemnify the whistleblower for damages as may be awarded by
33 the court.

34
35
36 **SEC. 20. *Retaliatory Action in the Workplace.*** – Any person who shall commit
37 any retaliatory act in a workplace as defined under this Act, against an employee
38 who is a whistleblower, or believed or suspected to be one, shall be guilty of an
39 offense and shall suffer the penalty of not more than six (6) months imprisonment
40 with the accessory penalty of suspension of the right to hold public office, in case
41 of a public officer or employee, and shall be civilly liable to indemnify a
42 whistleblower in case damages are incurred and as may be awarded by the
43 court.

44
45 Towards this end, the aggrieved whistleblower shall be entitled to the provisional
46 remedy of injunction against any retaliatory action in the workplace, prejudicial
47 conduct or discriminatory treatment by reason of the said whistleblower's
48 intended or actual disclosure.

49
50 The proceedings herein shall be independent of any action that an aggrieved
51 person may take before the Civil Service Commission or the Department of
52 Labor and Employment for unfair discriminatory practices, back wages, or other
53 labor dispute, or before other quasi-judicial agencies that may or may not have
54 arisen from a disclosure, or a believed or suspected disclosure.

1 **SEC. 21. *Penalty for Retaliatory Acts Against a Whistleblower.*** – Any person
2 who commits any of the retaliatory acts as defined in this Act against a
3 whistleblower and/or hinders, delays, prevents or dissuades a whistleblower
4 from:

- 5
- 6 (a) attending, assisting or testifying before any investigating agency or quasi-
7 judicial body or judicial;
- 8
- 9 (b) reporting to a law enforcement officer or judge the commission or
10 possible commission of an offense or a violation of conditions of
11 probation, parole, or release pending judicial proceedings;
- 12
- 13 (c) seeking the arrest of another person in connection with the offense;
- 14
- 15 (d) causing a criminal prosecution, or a proceeding for the revocation of a
16 parole or probation; or
- 17
- 18 (e) performing and enjoying the rights and benefits under this Act or attempts
19 to do so
- 20

21 shall be fined not more than One Hundred Thousand Pesos (P100,000.00) or
22 suffer imprisonment of not less than six (6) months but not more than six (6)
23 years or both at the discretion of a court and shall also suffer the penalty of
24 perpetual disqualification from holding public office in case of a public officer or
25 employee.

26

27

28 **SEC. 22. *Benefits, Security and Protection of a Qualified Whistleblower.*** – A
29 qualified whistleblower shall be entitled to an allowance equivalent to his/her
30 daily basic financial requirement, provided he/she requests for said allowance
31 and the Implementing Agency determines and approves the reasonableness of
32 such request.

33

34 A qualified whistleblower shall likewise be entitled to housing and personal
35 security regardless of whether the disclosure is made in confidence or in public.

36

37 Accordingly, the Implementing Agency is hereby authorized to allocate funds as
38 provided for in Section 32 hereof for the full satisfaction of the benefits and
39 security and protection of a qualified whistleblower.

40

41 This section is without prejudice to any benefits a qualified whistleblower may be
42 entitled to under R.A. No. 6891; *Provided*, That the necessary amount shall be
43 sourced from the budget as provided for in Section 32 hereof and that no
44 duplication of benefit shall ensue.

45

46

47 **SEC. 23. *Financial Rewards for Whistleblower.*** – A qualified whistleblower shall
48 be entitled to a corresponding monetary reward on a contingency basis,
49 equivalent to at least ten percentum (10%) of the amount which may be
50 recovered or the amount of One Million Pesos (P1,000,000.00), whichever is
51 lower, as a result of his/her disclosure.

52

53

54 **SEC. 24. *Abstract.*** – All government agencies, offices, bureaus and local
55 government units, including government owned or controlled corporations,
56 whether or not with original charters, shall conspicuously display an abstract of
57 this Act and the rights and protections of whistleblowers, including the obligations

1 of employers under this Act. Such abstract shall be provided in the implementing
2 rules and regulations.

3
4 All government agencies, offices, bureaus and local government units, including
5 government owned and controlled corporations, whether or not with original
6 charters, shall likewise put in place internal procedures for dealing with
7 whistleblowers consistent with the provisions of this Act and its implementing
8 rules and regulations. Said internal procedure shall be widely disseminated to all
9 employees.

10
11 All other employers, specifically those in the private sector, shall also
12 conspicuously display notices of their employees' protections and their
13 obligations under this Act and its implementing rules and regulations.

14
15
16 **SEC. 25. Failure of an Employer to Post Abstract.** – The failure to post an
17 Abstract or internal procedures as required under Section 24 of this Act shall
18 constitute an offense and shall be penalized with a fine in the amount of One
19 Hundred Thousand Pesos (P100,000.00) for the first offense. Said amount shall
20 be doubled for every succeeding offense/s.

21
22
23 **SEC. 26. Failure to Act or Report to the Implementing Agency.** – Any person
24 under obligation to report a disclosure under this Act to the Implementing
25 Agency, who fails to do so within the period of two (2) months, or who fails to act
26 thereon or cause an investigation thereof, shall be guilty of an offense and shall
27 suffer the penalty of not more than one (1) month imprisonment, and/or a fine
28 amounting to not more than Fifty Thousand Pesos (P50,000.00) without
29 prejudice to any other liability that may be imposed upon such person under
30 existing laws.

31
32
33 **SEC. 27. Confidentiality of the Proceedings.** – All proceedings involving
34 application and/or enjoyment of the benefits under this Act, including any action
35 taken thereon, shall be confidential in nature. No information or documents given
36 or submitted in support thereof shall be released except upon written order of the
37 Implementing Agency, and provided such disclosure shall not endanger the life of
38 a qualified whistleblower.

39
40
41 **SEC. 28. Powers and Functions of the Implementing Agencies or Agency.** – In
42 addition to their respective powers and functions under existing laws, the
43 Implementing Agencies shall:

- 44
45 (a) Supervise, monitor and coordinate all efforts relative to the implementation
46 and enforcement of the provisions of this Act;
47
48 (b) Investigate all disclosures made under this Act, prosecute or recommend
49 prosecution of the same when warranted;
50
51 (c) Evaluate the disqualification of whistleblower for coverage within this Act,
52 and whichever the case may be, make the appropriate decision on their
53 entitlement to the benefits and security and protection extended herein;
54
55 (d) Undertake, in coordination and cooperation with the private and public
56 sectors, an information campaign to educate the public on the provisions
57 and benefits of this Act;

- 1
2 (e) Develop plans and implement programs to further encourage
3 whistleblowers on acts constituting improper conduct with a view to
4 effective deterrence and/or prosecution;
5
6 (f) Control and administer, through coordination and consistent with the
7 provisions and purpose of this Act, the protection and benefits of
8 whistleblowers and the funds necessary to carry out the provisions of this
9 Act;
10
11 (g) Call upon, or deputize any department, bureau, office or any other
12 government agency or public official to assist in the effective
13 implementation and enforcement of this Act; and,
14
15 (h) Grant immunity in accordance with the provisions of this Act and its
16 implementing rules and regulation.
17
18

19 **SEC. 29. *Implementing Agency, Option of Whistleblower.*** – A whistleblower shall
20 have the right to choose which Implementing Agency he/she intends to be
21 admitted and qualified as a whistleblower. As such, the Implementing Agency so
22 chosen shall have the primary jurisdiction and authority to exercise the powers
23 and functions provided for under Section 28 of this Act.
24
25

26 **SEC. 30. *Congressional Whistleblower Program.*** – The Senate and the House
27 of Representatives may have their own Whistleblower's Program for resource
28 persons or whistleblowers appearing before them or their respective committees.
29

30 The resources person or whistleblower, with his/her express consent, may be
31 admitted into the program upon the recommendation of the legislative committee
32 where his/her testimony is needed when in its judgment there is pressing
33 necessity therefor; *Provided*, That such recommendation is approved by the
34 President of the Senate or the Speaker of the House, whichever the case may
35 be.
36

37 The Senate or the House of Representatives, whichever the case may be, shall
38 have the primary jurisdiction in the administration and implementation of the
39 program independent from any other agency of government when the
40 investigation or the safety of the resource person or whistleblower shall be
41 prejudiced.
42
43

44 **SEC. 31. *Implementing Rules and Regulations.*** – There is hereby created a
45 Whistleblower Council which shall be composed of the Implementing Agencies
46 and headed by the Office of the Solicitor General.
47

48 The Council shall be primarily and solely responsible for the drafting and
49 promulgation of the necessary Implementing Rules and Regulations (IRR) for the
50 effective implementation of this Act. This Council's submission to Congress of
51 the approved IRR and the causing of its publication in at least two (2)
52 newspapers of general circulation shall render the council *functus officio*.
53
54

55 **SEC. 32. *Funding.*** – The amount of One Hundred Million Pesos
56 (P100,000,000.00) is hereby authorized to be appropriated out of any funds in

1 the National Treasury not otherwise allocated to carry into effect the purposes of
2 this Act.

3
4 Other funding schemes or sources that may be authorized under existing laws
5 shall be allowed in furtherance hereof.

6
7
8 **SEC. 33. *Separability Clause.*** – If any provision or part hereof is held invalid or
9 unconstitutional, the remainder of the law or the provisions not otherwise affected
10 thereby shall remain valid and subsisting.

11
12
13 **SEC. 34. *Repealing Clause.*** – Any law, presidential decree or issuance,
14 executive order, letter of instruction, administrative order, rule or regulation
15 contrary to or inconsistent with, the provisions of this Act is hereby repealed,
16 modified, or amended accordingly.

17
18
19 **SEC. 35. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days after its
20 publication in the Official Gazette or at least two (2) newspapers of general
21 circulation.

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25
26
27 *Approved,*