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SENATE

S. B. No. 2969

RECEIVED BY: 

Introduced by Senator Ralph G. Recto

EXPLANATORY NOTE

Electric Cooperatives (ECs) provide vital services to its members and consumers within its coverage areas. They are primarily organized to undertake power generation, acquisition and operation of sub-transmission or distribution to its members. There are two types of electric cooperatives: those registered with the Cooperatives Development Authority (CDA) and those registered with the National Electrification Administration (NEA). Currently, only those ECs registered with the CDA are granted tax exemptions and other privileges leading to an uneven playing field for those registered with the NEA.

This bill proposes to equalize the opportunities for all ECs so that citizens are provided access to reasonably-priced electricity in consonance with the Energy Reform Agenda under the Philippine Development Plan in the short-term and achievement of a reliable and secure supply of energy in the long-term. With total peak demand expected to grow by 4.5% every year, the EC sector should be equipped to undertake its mandates financially and technologically.

In order to provide financial and technical assistance to electric cooperatives and achieve energy security, this bill proposes the following amendments to Presidential Decree No. 269, as amended, which created the NEA:

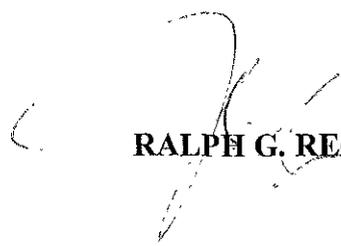
- NEA shall have supervisory functions over ECs and exercise step in rights in cases of ailing ECs by allowing the NEA to convert the ailing ECs to either a stock cooperative registered with the CDA or a stock corporation registered with the Securities and Exchange Commission (SEC);
- NEA shall be exempt from payment of all taxes, duties, fees, imposts, charges, costs and restrictions imposed by the government including local government units, charges under the Tariff and Customs Code and filing and service fees and other charges or cost in any court or administrative proceeding;
- ECs shall be granted permanent exemption from income tax, and all national, local and municipal taxes and fees subject to conditions;
- The Court of Appeals shall have the exclusive jurisdiction to review or set aside any order, ruling or decision of the NEA;
- The long-term business and economic viability of ECs shall be guaranteed by ensuring the independence of the Board of Directors and Officers of ECs and insulating their operations from local politics as much as practicable; and
- ECs shall be entitled to Congressional allocations, grants, subsidiaries and other financial assistance for rural electrification.

By empowering NEA to restructure ailing ECs, this bill seeks to resolve and forestall the accumulation of loans by the EC sector that hamper the expansion of their facilities and saddle their consumers with higher prices from the additional impositions due to the debts of ECs. The government had already condoned P18.1 Billion of the EC loans through the Power Sector Assets and Liabilities Management Corporation. The accumulated debts were incurred for power supply purchases from generation plants operated by the National Power Corporation, Value-Added Tax and disputed billings lodged with the Energy Regulatory Commission and others pending with the courts. The loan condonation led to reduction in rates charged by ECs to its customers from P.05 to P1.3507 per kilowatt hour.

The proposed bill is also designed to empower the EC sector to deal with the coming regime of retail competition and open access. All conditions for retail competition needed to take place are expected to be met in a few months, especially, (1) the privatization of at least 70% of the total capacity of generating assets of the NPC in Luzon and Visayas and (2) the transfer of management and control of at least 70% of power plants to Independent Power Producers Administrators. Likewise, the contestable market will also be able to participate in the open access scheme to be launched in December 26 this year.

Electrification is one of the key components in the country's march out of poverty by stimulating the economy, health, education, settlements and infrastructures development, among others. Despite achieving 98 per cent electrification nationwide, the Philippines still experiences power outages with a supply deficit as large as 185 megawatt hour, as recently as last year. Strengthening ECs and the NEA shall greatly help ECs to service their coverage areas in step with the goal to achieve nationwide energy security.

Approval of this bill, is urgently sought.

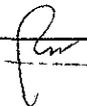


RALPH G. RECTO

SENATE

11 SEP 20 14:01

S. B. No. 2969

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Introduced by Senator Ralph G. Recto

AN ACT
AMENDING PRESIDENTIAL DECREE NO. 269, AS AMENDED, OR THE NATIONAL
ELECTIFICATION DECREE, RESTRUCTURING THE ELECTRIC COOPERATIVES,
PRESCRIBING ADDITIONAL POWERS AND FUNCTIONS AND STRENGTHENING
THE NATIONAL ELECTRIFICATION ADMINISTRATION AND FOR OTHER
PURPOSES

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

1 SECTION 1. This Act shall be known as the "National Electrification Administration
2 Reform Act of 2011."

3 SEC. 2. The Declaration of National Policy in Section 2 of Presidential Decree No. 269,
4 as amended, is hereby further amended to read as follows:

5 "Section 2. *Declaration of National Policy.*

6 "x x x.

7 "IN ADDITION TO THE FOREGOING, IT IS HEREBY DECLARED
8 THE POLICY OF THE STATE TO:

9 (A) PROMOTE SUSTAINABLE DEVELOPMENT IN RURAL AREAS
10 THROUGH RURAL ELECTRIFICATION ; AND

11 (B) EMPOWER ELECTRIC COOPERATIVES.

12 THIS ACT SHALL ESTABLISH A FRAMEWORK FOR
13 INTRODUCING STRUCTURAL REFORMS TO THE NATIONAL
14 ELECTRIFICATION ADMINISTRATION AND ELECTRIC
15 COOPERATIVES."

16 SEC. 3. A new section is hereby added as Section 2-A to read as follows:

17 "SEC. 2-A. SCOPE. THE PROVISIONS OF THIS ACT SHALL APPLY
18 TO THE OPERATIONS OF ELECTRIC COOPERATIVES REGISTERED
19 WITH THE NATIONAL ELECTRIFICATION ADMINISTRATION, AND
20 THE COOPERATIVE DEVELOPMENT AUTHORITY."

21 SEC. 4. Section 3 of Presidential Decree No. 269, as amended, is hereby further
22 amended to read as follows:

23 "Section 3. *Definitions.*

24 "(a) x x x

1 “(k) x x x

2 [(l) “Board of Power and Waterworks” shall mean Board of Power and
3 Waterworks or any successor board, agency or instrumentality that may hereafter
4 be established to perform the same or substantially similar functions.]

5 (L) [(m)] x x x

6 (M) [(n)] x x x

7 (N) [(o)] x x x

8 (O) [(p)] x x x

9 [(q) “Congress” shall mean the President during his exercise of Martial Law, or
10 the National Assembly under the new Constitution of 1973, whichever is the case
11 at any given time.]

12 (P) ELECTRIC COOPERATIVE SHALL REFER TO AN ELECTRIC
13 DISTRIBUTION UTILITY ORGANIZED AND REGISTERED PURSUANT
14 TO PRESIDENTIAL DECREE NO. 269, REPUBLIC ACT NO. 9520, AND
15 OTHER RELATED LAWS.

16 (Q) DOE SHALL REFER TO THE DEPARTMENT OF ENERGY
17 CREATED UNDER REPUBLIC ACT NO. 7638.

18 (R) ERC SHALL REFER TO THE ENERGY REGULATORY
19 COMMISSION CREATED UNDER REPUBLIC ACT NO. 9136.

20 (S) EPIRA SHALL REFER TO REPUBLIC ACT NO. 9136 OR THE
21 ELECTRIC POWER INDUSTRY REFORM ACT OF 2001.

22 (T) CDA SHALL REFER TO THE COOPERATIVE
23 DEVELOPMENT AUTHORITY CREATED UNDER REPUBLIC ACT
24 NO. 6939, AS AMENDED.”

25 **SEC. 5.** Section 4 of Presidential Decree No. 269, as amended, is hereby further amended
26 to read as follows:

27 “Section 4. *POWERS AND FUNCTIONS OF THE NATIONAL*
28 *ELECTRIFICATION ADMINISTRATION [NEA Authorities, Powers and*
29 *Directives.]*

30 “(a) x x x

31 “x x x

32 “(o) x x x.

33 “FURTHER, TO STRENGTHEN THE ELECTRIC COOPERATIVES TO
34 THE CHANGES INTRODUCED BY EPIRA, THE NEA SHALL:

35 (A) SUPPORT THE CONVERSION OF EXISTING ELECTRIC
36 COOPERATIVES TO STOCK COOPERATIVES TO BE DULY
37 REGISTERED WITH THE CDA OR STOCK CORPORATION TO BE
38 DULY REGISTERED WITH THE SECURITIES AND EXCHANGE
39 COMMISSION;

- 1 (B) SUPERVISE THE OPERATIONS OF ALL ELECTRIC
2 COOPERATIVES;
3 (C) EXERCISE STEP-IN RIGHTS AS HEREIN DEFINED;
4 (D) PROVIDE FINANCIAL AND TECHNICAL ASSISTANCE TO
5 ELECTRIC COOPERATIVES;
6 (E) PURSUE ELECTRIFICATION PROGRAMS THROUGH THE
7 ELECTRIC COOPERATIVES;
8 (F) ENJOY EXEMPTION FROM ALL TAXES, DUTIES, FEES, IMPOSTS
9 AND OTHER CHARGES;
10 (G) DEVOTE ALL RETURNS FROM ITS CAPITAL INVESTMENT TO
11 ATTAIN THE OBJECTIVES OF THIS ACT;
12 (H) RESTRUCTURE AILING ELECTRIC COOPERATIVES;
13 (I) DEVELOP, SET, AND ENFORCE TECHNICAL AND FINANCIAL
14 COMPLIANCE STANDARDS FOR THE EFFICIENT OPERATION OF
15 ELECTRIC COOPERATIVES SUCH AS THE OBSERVANCE OF
16 GOVERNMENT PROCUREMENT PROCEDURES AND ENFORCED
17 THROUGH A MECHANISM OF INCENTIVES TO COMPLYING
18 ELECTRIC COOPERATIVES AND DISINCENTIVES TO NON-
19 COMPLYING ELECTRIC COOPERATIVES;
20 (J) IMPOSE ADMINISTRATIVE PENALTIES AND WHEN
21 WARRANTED, FILE CRIMINAL CASES AGAINST THOSE WHO
22 VIOLATE THE PROVISIONS OF THIS ACT AND ITS
23 IMPLEMENTING RULES; AND,
24 (K) SERVE AS GUARANTOR TO QUALIFIED ELECTRIC
25 COOPERATIVES FOR THEIR TRANSACTIONS FOR THE
26 PURCHASE OF ELECTRICITY SUCH AS CO-SIGNING IN ELECTRIC
27 SALES AGREEMENTS TO COMPLYING ELECTRIC
28 COOPERATIVES.”

29 **SEC. 6.** A new section is hereby added as Section 4-A to read as follows:

30 “SEC. 4-A. SUPERVISORY FUNCTIONS OF THE NATIONAL
31 ELECTRIFICATION ADMINISTRATION OVER ELECTRIC
32 COOPERATIVES. – IN THE EXERCISE OF ITS POWER OF SUPERVISION
33 OVER ELECTRIC COOPERATIVES, NEA SHALL HAVE THE FOLLOWING
34 POWERS:

- 35 (A) ISSUE ORDERS, RULES AND REGULATIONS AND MOTU PROPIO
36 OR UPON PETITION OF THIRD PARTIES, TO CONDUCT
37 INVESTIGATIONS, REFERENDA AND OTHER SIMILAR ACTIONS
38 IN ALL MATTERS AFFECTING SAID ELECTRIC COOPERATIVES;
39 AND,

1 (B)ISSUE PREVENTIVE AND/OR DISCIPLINARY MEASURES
2 INCLUDING BUT NOT LIMITED TO SUSPENSION AND/OR
3 REMOVAL AND REPLACEMENT OF ANY OR ALL OF THE
4 MEMBERS OF THE BOARD OF DIRECTORS, OFFICERS OR
5 EMPLOYEES OF THE ELECTRIC COOPERATIVE, AS THE NEA
6 MAY DEEM FIT AND NECESSARY AND TO TAKE ANY OTHER
7 REMEDIAL MEASURES AS THE LAW OR ANY AGREEMENT OR
8 ARRANGEMENT WITH NEA MAY PROVIDE.

9 IN THE EXERCISE OF ITS SUPERVISORY RIGHTS UNDER THIS
10 ACT, THE NEA MUST STRICTLY OBSERVE DUE PROCESS.“

11 **SEC. 7.** A new section is hereby added as Section 4-B to read as follows:

12 “SEC. 4-B. THE NEA SHALL HAVE STEP-IN RIGHTS IN CASES OF
13 AILING ELECTRIC COOPERATIVES. UPON EXERCISING ITS STEP-IN
14 RIGHTS, THE NEA SHALL IMMEDIATELY TAKE OVER THE
15 OPERATIONS OF THE AILING ELECTRIC COOPERATIVE FROM THE
16 BOARD. DURING THE TAKE OVER, THE NEA MAY ALSO REMOVE
17 OFFICERS IN ORDER TO EFFECTIVELY MANAGE THE AFFAIRS OF THE
18 AILING COOPERATIVE. WITHIN A REASONABLE PERIOD UPON TAKE
19 OVER, THE NEA MAY CONVERT THE AILING ELECTRIC COOPERATIVE
20 TO EITHER A STOCK COOPERATIVE REGISTERED WITH THE CDA OR A
21 STOCK CORPORATION REGISTERED WITH THE SECURITIES AND
22 EXCHANGE COMMISSION.

23 IN THE DETERMINATION OF CONVERSION, THE NEA SHALL BE
24 GUIDED BY THE ABILITY TO PAY OF THE MEMBER-CONSUMERS OF
25 SAID ELECTRIC COOPERATIVE FOR THEIR SHARES IN THE STOCK
26 COOPERATIVE OR STOCK CORPORATION.

27 IN THE EXERCISE OF ITS STEP-IN RIGHTS UNDER THIS ACT, THE
28 NEA MUST STRICTLY OBSERVE DUE PROCESS. THE STEP-IN RIGHTS
29 MAY ONLY BE EXERCISED IN CASE OF FAILURE OF THE ELECTRIC
30 COOPERATIVE TO MEET OPERATIONAL STANDARDS SET BY NEA OR
31 IN OTHER ANALAGOUS INSTANCES SET FORTH IN THE
32 IMPLEMENTING RULES AND REGULATIONS OF THIS ACT.“

33 **SEC. 8.** A new section is hereby added as Section 4-C to read as follows:

34 “SEC. 4-C. THE INSTITUTION OF A WRIT OF CERTIORARI OR
35 OTHER SPECIAL REMEDY IN ANY REGIONAL TRIAL COURT SHALL IN
36 NO CASE SUPERCEDE OR STAY ANY ORDER, RULING OR DECISION OF
37 THE NEA IN THE EXERCISE OF ITS RIGHTS UNDER THIS ACT UNLESS
38 THE COURT OF APPEALS SHALL SO DIRECT: *PROVIDED*, THAT SUCH A
39 STAY SHALL IN NO CASE EXCEED SIXTY (60) DAYS AND A BOND IN

1 SUCH FORM AND AMOUNT ENOUGH TO COVER THE LIABILITIES
2 ARISING DURING THE PERIOD OF THE STAY SHALL BE POSTED:
3 *PROVIDED, FURTHER*, THAT THE COURT OF APPEALS SHALL RENDER
4 A DECISION ON THE CASE WITHIN SIXTY (60) DAYS FROM THE FILING
5 OF THE CASE.“

6 **SEC. 9.** A new section is hereby added as Section 26-A of Presidential Decree No. 269,
7 as amended to read as follows:

8 “SEC. 26-A. INDEPENDENCE OF THE BOARD OF DIRECTORS
9 AND OFFICERS OF ELECTRIC COOPERATIVES. – TO ENSURE THE
10 LONG TERM BUSINESS AND ECONOMIC VIABILITY OF ELECTRIC
11 COOPERATIVES, THE OPERATIONS AND STRATEGIC PLANNING OF
12 ELECTRIC COOPERATIVES MUST AS MUCH AS PRACTICABLE BE
13 INSULATED FROM LOCAL POLITICS.

14 TOWARDS THIS END, NO PERSON SHALL BE APPOINTED AS AN
15 OFFICER OR BE ELIGIBLE TO RUN AS A BOARD MEMBER OF AN
16 ELECTRIC COOPERATIVE IF:

- 17 1) HE WAS A CANDIDATE IN THE PRECEDING ELECTION FROM
18 THE TIME OF APPOINTMENT OR FILING OF CANDIDACY FOR
19 THE BOARD; OR,
20 2) HE IS A RELATIVE UP TO THE FOURTH DEGREE OF AFFINITY
21 OR CONSANGUINITY OF AN INCUMBENT ELECTED OR
22 APPOINTED OFFICIAL OF GOVERNMENT.”

23 **SEC. 10.** A new section is hereby added as Section 26-B of Presidential Decree No. 269,
24 as amended to read as follows:

25 “SEC. 26-B. FIT AND PROPER RULE. – TO ENSURE THAT THE
26 MANAGEMENT AND OPERATIONS OF ELECTRIC COOPERATIVES ARE
27 CARRIED OUT WITH DUE REGARD TO ITS ECONOMIC VIABILITY, THE
28 NEA SHALL PRESCRIBE, PASS UPON AND REVIEW THE
29 QUALIFICATIONS AND DISQUALIFICATIONS OF INDIVIDUALS
30 APPOINTED OR ELECTED TO ELECTRIC COOPERATIVES AND
31 DISQUALIFY THOSE FOUND UNFIT.

32 AFTER DUE NOTICE TO THE BOARD OF DIRECTORS AND
33 OFFICERS OF THE ELECTRIC COOPERATIVE, NEA MAY DISQUALIFY,
34 SUSPEND OR REMOVE ANY DIRECTOR OR OFFICER WHO COMMITS
35 AN ACT WHICH RENDER HIM UNFIT FOR THE POSITION.

36 IN DETERMINING WHETHER AN INDIVIDUAL IS FIT AND
37 PROPER TO HOLD A POSITION OF A DIRECTOR OR OFFICER OF AN
38 ELECTRIC COOPERATIVE, REGARD SHALL BE GIVEN TO HIS

1 INTEGRITY, EXPERIENCE, EDUCATION, TRAINING AND
2 COMPETENCE.“

3 **SEC. 11.** A new section is hereby added as Section 32-A to read as follows:

4 “SEC. 32-A. REGISTRATION AS STOCK COOPERATIVES – TO
5 FOSTER GREATER ACCOUNTABILITY, ALL ELECTRIC COOPERATIVES
6 MAY OPT TO REGISTER WITH THE CDA AND SUCH REGISTRATION
7 SHALL BE FOR THE SOLE PURPOSE OF AVAILING THE TAX
8 INCENTIVES CONTAINED IN THE COOPERATIVE CODE OF THE
9 PHILIPPINES. HOWEVER, ELECTRIC COOPERATIVES MUST
10 NEVERTHELESS SUBMIT TO THE REPORTORIAL AND DOCUMENTARY
11 REQUIREMENTS OF THE CDA.

12 EXISTING ELECTRIC COOPERATIVES MAY LIKEWISE OPT TO
13 REGISTER AS STOCK CORPORATIONS WITH THE SECURITIES AND
14 EXCHANGE COMMISSION. HOWEVER, ELECTRIC COOPERATIVES
15 REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION
16 SHALL NO LONGER ENJOY THE INCENTIVES CONTAINED UNDER THIS
17 ACT.”

18 **SEC. 12.** A new section is hereby added as Section 32-B to read as follows:

19 “SEC. 32-B. ROLE OF THE COOPERATIVE DEVELOPMENT
20 AUTHORITY OVER ELECTRIC COOPERATIVES – THE CDA SHALL
21 SERVE AS A REGISTRY OF ELECTRIC COOPERATIVES. THE
22 RESOLUTION OF INTRA-COOPERATIVE DISPUTES INVOLVING THE
23 OPERATIONS AND FINANCIALS OF ELECTRIC COOPERATIVES
24 INCLUDING MANAGEMENT CONCERNS RELATED THERETO SHALL BE
25 WITH THE NEA.“

26 **SEC. 13.** A new section is hereby added as Section 32-C to read as follows:

27 “SEC. 32-C. ENTITLEMENTS OF ELECTRIC COOPERATIVES. –
28 CONSISTENT WITH THE DECLARED POLICY OF THIS ACT, THE
29 FOLLOWING ARE ADDITIONAL ENTITLEMENTS TO BE ENJOYED BY
30 ELECTRIC COOPERATIVES:

31 (A) TO BE ENTITLED TO CONGRESSIONAL ALLOCATIONS, GRANTS,
32 SUBSIDIARIES AND OTHER FINANCIAL ASSISTANCE FOR RURAL
33 ELECTRIFICATION;

34 (B) TO AVAIL OF PREFERENTIAL RIGHTS GRANTED TO
35 COOPERATIVES UNDER REPUBLIC ACT NO. 7160 OTHERWISE
36 KNOWN AS THE LOCAL GOVERNMENT CODE, AND OTHER
37 RELATED LAWS; AND,

38 (C) TO RECEIVE, ALL SUBSIDIES, GRANTS, AND OTHER ASSISTANCE
39 THAT SHALL FORM PART OF THE DONATED CAPITAL AND FUNDS

1 OF THE ELECTRIC COOPERATIVES, AND AS SUCH, IT SHALL NOT
2 BE SOLD, TRADED NOR BE DIVIDED INTO SHARE HOLDINGS AT
3 ANY TIME; THESE DONATED CAPITAL/FUND SHALL BE
4 VALUATED FOR THE SOLE PURPOSE OF DETERMINING THE
5 EQUITY, PARTICIPATION OF THE MEMBERS; PROVIDED THAT THE
6 CASE OF DISSOLUTION OF THE ELECTRIC COOPERATIVE, SAID
7 DONATED CAPITAL SHALL BE SUBJECT TO ESCHEAT.

8 AS AN INCENTIVE TO ELECTRIC COOPERATIVES COMPLYING
9 WITH ITS DIRECTIVES OR ARE MANAGED EFFECTIVELY AND
10 EFFICIENTLY, THE NEA MAY PRIORITIZE ELECTRIC COOPERATIVES
11 IN THE GRANTING OF THE ENTITLEMENTS.”

12 **SEC. 14.** A new section is hereby added as Section 64-A to read as follows:

13 “SEC. 64-A. RULES AND REGULATIONS. – WITHIN SIXTY (60)
14 DAYS FROM THE EFFECTIVITY OF THIS ACT, THE DOE SHALL, IN
15 COORDINATION WITH THE NEA AND THE CDA, CONDUCT PUBLIC
16 HEARINGS AND ISSUE SUCH RULES AND REGULATIONS AS MAY BE
17 NECESSARY TO IMPLEMENT THIS ACT.”

18 **SEC. 15.** A new section is hereby added as Section 64-B to read as follows:

19 “SEC. 64-B. PENALTIES. – ANY PERSON WHO WILLFULLY
20 VIOLATES ANY RULE OR REGULATIONS PROMULGATED PURSUANT
21 TO THE AUTHORITY GRANTED IN THIS ACT SHALL, UPON
22 CONVICTION BE PUNISHED BY A FINE NOT LESS THAN TEN
23 THOUSAND PESOS (P10,000.00) BUT NOT MORE THAN FIVE HUNDRED
24 THOUSAND PESOS (P500,000.00) OR BY IMPRISONMENT OF NOT LESS
25 THAN SIX (6) MONTHS BUT NOT MORE THAN ONE (1) YEAR OR BOTH,
26 AT THE DISCRETION OF THE COURT: *PROVIDED*, THAT IF THE
27 VIOLATION IS COMMITTED BY A JURIDICAL PERSON, THE PENALTY
28 HEREIN SHALL BE IMPOSED UPON THE OFFICIAL AND/OR EMPLOYEE
29 THEREOF RESPONSIBLE FOR THE VIOLATION: *PROVIDED, FURTHER*,
30 THAT IF THE VIOLATION IS COMMITTED BY A GOVERNMENT
31 OFFICIAL OR EMPLOYEE INCLUDING THOSE IN GOVERNMENT-
32 OWNED OR CONTROLLED CORPORATIONS, HE SHALL IN ADDITION
33 TO THE PENALTY AS PROVIDED HEREIN BE SUBJECTED TO
34 ADMINISTRATIVE DISCIPLINARY ACTION.”

35 **SEC. 16. *Repealing Clause.*** – Any provision of law, presidential decree, executive order,
36 or rules and regulations inconsistent with the provisions of this Act or with the rules and
37 regulations issued pursuant thereto is hereby repealed or modified accordingly.

38 **SEC. 17. *Separability Clause.*** – If any provision of this Act is declared invalid or
39 unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

1 **SEC. 18. *Effectivity.*** – This Act shall take effect immediately upon publication in at least
2 two (2) newspapers of general circulation or in the Official Gazette.

3 *Approved,*