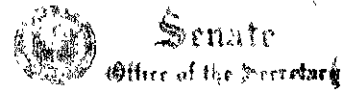


SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



75 FEB 26 P5:00

SENATE

Senate Bill No. 2672

RECEIVED BY: lv

Introduced by SENATOR SONNY ANGARA

**AN ACT PROMOTING AND AUTHORIZING PUBLIC-PRIVATE PARTNERSHIPS
FOR THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF
INFRASTRUCTURE FACILITIES, APPROPRIATING FUNDS THEREFOR, AND FOR
OTHER PURPOSES.**

EXPLANATORY NOTE

The government has traditionally been in charge of providing and financing infrastructure in the country. However, investment requirements have exceeded the capacities of the government, prompting the public sector to enable private participation in infrastructure development. In the past two decades, a number of services in utilities, transportation, property development and information technology are provided through contractual arrangements such as the build-operate-transfer (BOT).

Reforms to the BOT processes, however, are necessary to better address the needs and qualms of public-private partnerships (PPP) investors. For the country to build on its recent economic gains and to ensure the proper investment environment in our country forecasted as the 2nd fastest growing economy in the world in 2015,¹ the private sector must be further encouraged to make investments through a modernized and enhanced PPP law.

Thus, this bill seeks to create an enabling environment for PPPs wherein the rules are fair, clear, and equally applied to all, by providing liberalized government regulations and procedures incorporating the valuable lessons learned from successful and failed projects in the past as well as global best practices in PPP, and by expanding the coverage of PPP to include joint ventures, and operation and maintenance contracts.

It also aims to protect public interest by ensuring fair and reasonable pricing and timely delivery of quality infrastructure, goods and services, and by requiring full public disclosure of all PPP transactions.

Under the bill, temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions against any PPP project cannot be issued by any other court except the Supreme Court but with a validity period of only six months.

With the additional incentives provided under this bill, we can attract more

¹ Bloomberg New Consensus Survey 2015.

PPPs to help the government hasten and improve the construction of public infrastructure and services to boost the growth of the Philippine economy.

In view of the foregoing, the passage of this bill is earnestly sought.



SONNY ANGARA

SENATE

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Introduced by SENATOR SONNY ANGARA

AN ACT PROMOTING AND AUTHORIZING PUBLIC-PRIVATE PARTNERSHIPS FOR THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE FACILITIES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

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

1 **SEC. 1.** Short Title. - This Act shall be known as the "Public-Private Partnership
2 (PPP) Act" of the Philippines.
3

4 **SEC 2.** Declaration of Policy. – The State recognizes the role of the private
5 sector in national development. It is thus the policy of the State to attract the private
6 sector to undertake the financing, design, construction, operation and maintenance
7 of infrastructure facilities necessary for public use or public service under the
8 following principles:(i) timely delivery of quality infrastructure facilities, (ii) fair pricing
9 of user fees for such facilities, (iii) transparent and competitive process for selecting
10 the private sector partner, and (iv) full public disclosure of transactions under this
11 Act.
12

13 **SEC. 3.** Definition of Terms. – The following terms used in this Act shall have
14 the meanings stated below:
15

16 (a) Approving Body – refers to an entity authorized to approve PPP
17 projects proposed under this Act and its IRR, in accordance with Section 6 of this
18 Act.
19

20 (b) Construction – refers to new construction, rehabilitation, improvement,
21 expansion, alteration, installation, and related works and activities in connection with
22 an infrastructure facility, including the necessary supply of equipment, materials,
23 labor and services and related items.
24

25 (c) Contractor – refers to any person, who may or may not be the project
26 proponent, and who shall undertake the actual construction of an infrastructure
27 facility.
28

29 (d) Cooperation Period – refers to the period of operation of an
30 infrastructure facility, provided, that in the case of public utilities requiring a
31 franchise, such period shall not exceed the maximum period prescribed by existing
32 laws.
33

34 (e) GOCC – refers to a government-owned or -controlled corporation, a
35 government instrumentality with corporate powers, or a government corporate entity.

1 (f) ICC – refers to the Investment Coordination Committee of the NEDA
2 Board.

3
4 (g) Implementing Agency – refers to a department, bureau, office,
5 instrumentality, commission, authority, GOCC, state university or college, or
6 government financial institution of the National Government, or an LGU.

7
8 (h) Infrastructure Facility – refers to a facility that has been determined by
9 the Government to be necessary for public use or public service or for the discharge
10 of governmental or proprietary functions, including but not limited to, power plants,
11 highways, ports, airports, canals, dams, hydropower projects, water supply,
12 irrigation, telecommunications, railroads and railways, transport systems, land
13 reclamation projects, industrial estates or townships, housing, government buildings,
14 tourism projects, markets, slaughterhouses, warehouses, solid waste
15 management, information technology systems and infrastructure, education and
16 health facilities, sewerage, drainage, dredging, climate change mitigation and
17 adaptation measures, and other similar facility.

18
19 (i) IRR – refers to the implementing rules and regulations of this Act.

20
21 (j) LGU – refers to a local government unit.

22
23 (k) Local PPP Project – refers to a PPP Project that will be undertaken by
24 an LGU.

25
26 (l) National PPP Project – refers to a PPP Project that will be undertaken
27 by an Implementing Agency of the National Government.

28
29 (m) NEDA – refers to the National Economic and Development Authority.

30
31 (n) PBAC – refers to the Prequalification Bids and Awards Committee of
32 the Implementing Agency.

33
34 (o) PDMF – refers to the Project Development and Monitoring Facility
35 created under Section 7 of this Act.

36
37 (p) PPP – refers to a public-private partnership governed by a contractual
38 arrangement between the implementing agency and the project proponent for the
39 financing, design, construction, operation, and maintenance, or any combination
40 thereof, of an infrastructure facility under this Act.

41
42 (q) PPP Center – refers to the Coordinating Council of the Philippine
43 Assistance Program that was created under Republic Act No. 7718 and reorganized
44 and renamed the Public-Private Partnership Center of the Philippines under
45 Executive Order No. 8, series of 2010, as amended.

46
47 (r) PPP Contract – refers to the contract between the Implementing
48 Agency and the Project Proponent for the financing, Construction, operation, or
49 maintenance of an Infrastructure Facility under a PPP Project.

50
51 (s) PPP Project – refers to a project undertaken under this Act.

52
53 (t) Person – refers to an individual, sole proprietorship, partnership,
54 corporation or any other form of organization, whether domestic or foreign.

55
56 (u) Project Cost – refers to total capital cost, financing and other expenses
57 for the design, construction, operation, and maintenance of an infrastructure facility.

1 (v) Project Proponent – refers to any private person who shall undertake a
2 PPP project.

3
4 (w) Rate of Return – refers to the rate of return on the investment of a
5 project proponent as approved by the Approving Body taking into account, among
6 others, the prevailing cost of capital in the domestic and international markets, and
7 risks being assumed by the project proponent; provided, that in case of an
8 unsolicited proposal, such rate of return shall be determined by the appropriate
9 Approving Body prior to the call for proposals.

10
11 (x) Unsolicited Proposal – refers to proposals for a PPP Project that was
12 submitted by a Project Proponent *without the implementing agency soliciting such*
13 *proposal.*

14
15 **SEC. 4. Authority of Implementing Agencies.** –Any Implementing agency that is
16 authorized by existing laws or its charter, to engage in the financing, construction,
17 operation, and maintenance of an Infrastructure Facility is hereby authorized to
18 undertake PPP Projects in accordance with this Act.

19
20 **SEC. 5. Variations of Contractual Arrangements.** –PPP Projects may be
21 undertaken through any of the following contractual arrangements and such other
22 variations as may be described in the IRR and approved by the President of the
23 Philippines:

24
25 (i) Build-and-Transfer – refers to a contractual arrangement whereby the
26 Project Proponent undertakes the financing and Construction of an Infrastructure
27 Facility and transfers ownership to the Implementing Agency upon its completion.
28 The Implementing Agency shall pay the Project Proponent, on an agreed schedule,
29 its total investments expended on the project, plus a return not exceeding the
30 Approved Rate of Return. This arrangement may be employed in the Construction of
31 any Infrastructure Facility, including critical facilities which, for security or strategic
32 reasons, must be operated directly by the Government.

33
34 (ii) Build-Lease-and-Transfer – refers to a contractual arrangement
35 whereby the Project Proponent undertakes the financing and Construction of an
36 Infrastructure Facility, upon its completion leases it to the Implementing Agency for
37 the duration of the Cooperation Period, and after the Cooperation Period
38 automatically transfers ownership to the Implementing Agency.

39
40 (iii) Build-Own-and-Operate – refers to a contractual arrangement whereby
41 the Project Proponent undertakes the financing, Construction, ownership, operation,
42 and maintenance of an Infrastructure Facility. The Project Proponent is allowed to
43 collect tolls, fees, rentals or other charges from users of the Infrastructure Facility to
44 recover its total investment and operating and maintenance costs plus a return not
45 exceeding the Approved Rate of Return.

46
47 (iv) Build-Operate-and-Transfer – refers to a contractual arrangement
48 whereby the Project Proponent undertakes the financing and Construction of an
49 Infrastructure Facility, operates and maintains it during the Cooperation Period, and
50 transfers ownership to the Implementing Agency at the end of the Cooperation
51 Period.

52
53 (v) Build-Transfer-and-Operate – refers to a contractual arrangement
54 whereby the Project Proponent undertakes the financing and Construction of an
55 Infrastructure Facility, transfers ownership to the Implementing Agency once it is
56 commissioned satisfactorily, and operates the Infrastructure Facility for the duration
57 of the Cooperation Period.

1 (vi) Contract-Add-and-Operate – refers to a contractual arrangement
2 whereby the Project Proponent undertakes the financing and Construction of an
3 addition to an Infrastructure Facility that it is leasing from the Implementing Agency
4 and operates and maintains the expanded Infrastructure Facility for the duration of
5 the Cooperation Period. There may, or may not be, a transfer arrangement in regard
6 to the Infrastructure Facility.

7
8 (vii) Develop-Operate-and-Transfer – refers to a contractual arrangement
9 whereby the Project Proponent undertakes the financing, Construction, operation,
10 and maintenance of an Infrastructure Facility as well as its adjoining property in
11 order to enjoy some of the benefits the investment creates such as higher property
12 or rent values.

13
14 (viii) Joint Venture – refers to a contractual arrangement whereby the
15 Project Proponent and the Implementing Agency, contribute money, services,
16 assets, or a combination of any or all of the foregoing, to undertake a PPP Project,
17 with the intention to share profits, risks and losses. Assets may include equipment,
18 land, intellectual property or anything of value.

19
20 (ix) Operations and Maintenance Contract – refers to a contractual
21 arrangement whereby the Project Proponent undertakes the operation and
22 maintenance of an Infrastructure Facility owned by the Implementing Agency,
23 including the acquisition or provision and upgrading of equipment, systems and
24 other items related to operation and maintenance. The Project Proponent shall be
25 compensated in the form of a performance-based management or service fee during
26 the Cooperation Period.

27
28 (x) Rehabilitate-Operate-and-Transfer – refers to a contractual
29 arrangement whereby the Project Proponent undertakes the financing,
30 refurbishment, improvement, operation, and maintenance of an existing
31 Infrastructure Facility for the duration of the Cooperation Period, and transfers
32 ownership of the Infrastructure Facility to the Implementing Agency at the end of the
33 Cooperation Period.

34
35 **SEC. 6.** Identification of PPP Projects. – Implementing agencies that are
36 required under existing laws to identify priority development projects shall ensure
37 that such projects are consistent with the Philippine Development Plan or its
38 equivalent at the local level and that such projects include PPP Projects. The
39 implementing agencies shall submit their list of PPP Projects or any update thereto
40 to the PPP Center for information.

41
42 **SEC. 7.** Approval of PPP Projects. – The approval of PPP projects under this
43 Act and its IRR shall be in accordance with the following:

44
45 A. National PPP Projects – The Approving Body for a National PPP Project
46 shall be the ICC, the NEDA Board, or both, depending on the project cost as
47 prescribed in the IRR; provided, that (i) if the implementing agency is a GOCC, the
48 GOCC shall obtain the approval of the head of the Department to which the GOCC
49 is attached; and (ii) if the Implementing Agency is a Department, the consent of the
50 GOCC attached to such Department and affected by the PPP Project is not required.
51 If a National PPP Project will have an impact on a region, the implementing agency
52 shall provide the concerned Regional Development Council with a copy of the
53 project proposal prior to submitting such project proposal to the Approving Body for
54 approval. The Regional Development Council may, if it so desires, endorse the
55 project to the Approving Body; provided, that the endorsement of the Regional
56 Development Council shall not be necessary for approval of the project unless
57 required by the Approving Body.

1
2 B. Local PPP Projects – The Approving Body for a Local PPP Project shall be
3 the local development councils, the ICC, the NEDA Board, or some or all of them,
4 depending on the project cost as may be prescribed in the IRR.
5

6 **SEC. 8.** Project Development and Monitoring Facility (PDMF). – A special fund
7 is hereby created to be known as the PDMF, which shall be used for the
8 procurement of advisory and support services related to the preparation, structuring,
9 probity management, procurement, financial close, and monitoring of implementation
10 of PPP projects. The PDMF Fund referred to under Executive Order No. 8, series of
11 2010, as amended by Executive Order No. 136, series of 2013, shall be transferred
12 to the PDMF under this Act. The PDMF may be funded through and such amount as
13 may be needed and included in the General Appropriations Act, Official
14 Development Assistance or other sources. The management and use of the PDMF
15 shall be in accordance with the following:
16

17 A. Management. – The PDMF shall be managed and administered by the PPP
18 Center as a revolving fund; thus, in addition to the amounts appropriated herein, and
19 in order to sustain the PDMF, the PPP Center may collect and receive fees and
20 recover costs expended through PDMF in accordance with the guidelines that shall
21 be approved by the PPP Governing Board. Such amount shall be retained and
22 authorized to be used by the PPP Center for the purposes indicated herein.
23

24 B. Approval of Applications. – A PDMF Committee is hereby created to (i)
25 recommend guidelines on the use of PDMF and recovery of costs, for the approval
26 of the PPP Governing Board, and (ii) approve applications for PDMF support
27 submitted by implementing agencies. It shall be composed of representatives from
28 the National Economic and Development Authority (NEDA), Department of Finance
29 (DOF), Department of Budget and Management (DBM) and the PPP Center. The
30 PPP Center shall serve as Secretariat for the PDMF Committee.
31

32 C. Procurement. – To ensure fast procurement of advisory support, the
33 consultants financed through PDMF shall be engaged based on indefinite delivery
34 contracts. Individual advisory contracts shall be drawn from a panel of consultants
35 under indefinite delivery contracts using a fixed budget selection mode or any mode
36 as may be prescribed in the IRR. In order to facilitate access to global best practices
37 in PPP and enhance value for money, the selection of consultants financed through
38 PDMF shall also be open to international firms.
39

40 **SEC. 9.** Public Bidding of Projects. – The public bidding of projects shall be in
41 accordance with the following:
42

43 A. Publication. – Upon approval of PPP projects as mentioned in Section 6 of
44 this Act, the head of the implementing agency concerned shall immediately cause
45 the publication of a notice inviting all prospective project proponents to participate in
46 a transparent and competitive public bidding, once every week for three (3)
47 consecutive weeks, in at least two (2) newspapers of general circulation and in at
48 least one (1) local newspaper which is circulated in the region, province, city or
49 municipality where the project will be implemented. Said notice shall also be posted
50 continuously in the websites of the implementing agency and the PPP Center.
51

52 B. Public Bidding. – The public bidding shall be conducted under a single or
53 two-stage system. The pre-qualification documents, technical, and financial
54 proposals shall be submitted in at least three (3) separate envelopes or containers.
55 The procedures for public bidding, which shall be transparent and competitive,
56 including the conduct of one-on-one meetings with prequalified bidders, shall be
57 outlined in the IRR.

1
2 C. Award. – The contract shall be awarded to the bidder who has passed the
3 pre-qualification stage for having satisfied the minimum financial, organizational and
4 legal standards required by this Act and its IRR, has passed the technical proposal
5 evaluation, and has submitted the most favorable financial bid based on the
6 parameters defined in the bid documents.
7

8 D. Single Complying And Responsive Bid. – In case of a single complying and
9 responsive bid, the implementing agency may award the PPP contract to that bidder
10 that submitted such bid upon its compliance with the post-award requirements under
11 the bidding rules of the PPP project. A bid shall be considered a single complying
12 and responsive bid if it falls under any of the following circumstances:
13

14 (a) If, after advertisement, only one bidder applied for prequalification and
15 it meets the prequalification requirements, after which it is required to submit a bid or
16 proposal which is subsequently found by the implementing agency to be complying;
17

18 (b) If, after advertisement, more than one bidder applied for
19 prequalification but only one meets the prequalification requirements, after which it
20 submits a bid or proposal which is found by the implementing agency to be
21 complying;
22

23 (c) If, after prequalification of more than one bidder, only one submits a
24 bid which is found by the implementing agency to be complying; or,
25

26 (d) If, after prequalification, more than one bidder submits bids but only
27 one is found by the implementing agency to be complying.
28

29 E. Protest. – The following protest protocol shall be strictly followed in all stages
30 of the selection process; provided, that no appeal shall stay the selection process;
31 provided further, that a PPP Contract may not be awarded until all appeals have
32 been resolved in accordance with this sub-section:
33

34 (a) Decisions of the PBAC may be questioned by filing a motion for
35 reconsideration within a period prescribed in the IRR.
36

37 (b) The decision of the PBAC on the motion for reconsideration may be
38 further questioned by filing an appeal to the head of the implementing agency
39 concerned and paying a non-refundable appeal fee in an amount equivalent to no
40 less than ½ of 1% of the project cost within a period prescribed in the IRR.
41

42 (c) If the head of the implementing agency in the immediately preceding
43 paragraph is not a Department Secretary, the decision of the head of the
44 implementing agency may be further questioned by filing an appeal to the Secretary
45 of the Department to which the implementing agency is attached within a period
46 prescribed in the IRR.
47

48 (c) The decision of the Department Secretary may be questioned by filing
49 an appeal to the Office of the President.
50

51 F. Failure to Comply or Execute the Contract. – If the winning bidder fails to
52 comply with any post-award requirement or fails to execute the PPP Contract with
53 the implementing agency, the latter may proceed to negotiation with the next
54 technically and financially qualified bidder. This is without prejudice to other legal
55 remedies available to the implementing agency such as, but not limited to, the
56 forfeiture of bid security, the withdrawal of Notice of Award, or both.
57

1 **SEC. 10.** Unsolicited Proposals. – Projects that are not in the list of priority
2 projects may be considered for unsolicited proposals. Priority projects shall not be
3 considered for unsolicited proposals, except when they involve a new concept or
4 technology.

5
6 When a project proponent submits an unsolicited proposal, the implementing
7 agency may either:

8
9 (a) Reject the proposal;

10
11 (b) Use the unsolicited proposal as the basis for public bidding as provided
12 in Section 9 of this Act. Upon approval by the appropriate Approving Body, the
13 original proponent thereof shall be reimbursed of the cost incurred in the preparation
14 of the proposal, such as the cost of any feasibility study undertaken; Provided, such
15 reimbursement:

16
17 (i) shall be in an amount specified in the IRR of this Act, but not
18 exceeding three percent (3%) of the project cost excluding those which will be borne
19 by the implementing agency, such as, but not limited to, the cost of right-of-way
20 acquisitions; and

21
22 (ii) shall be paid in full by the winning project proponent as a requirement
23 for the award of the contract.

24
25 If the implementing agency fails to act on the proposal within the period stated
26 in the IRR of this Act, the project proposal shall be deemed rejected, without
27 *prejudice to any liability that the erring or negligent officials or employees may incur*
28 *under existing laws.*

29
30 (c) Accept the unsolicited proposal on a negotiated basis: Provided, that
31 the following conditions are met:

32
33 (i) The project does not receive any viability gap funding or direct
34 payments from any government agency; provided, that costs of right-of-way,
35 resettlement and real estate taxes shall not be considered as part of the viability gap
36 funding; and

37
38 (ii) Guided by the principles of transparency and competitiveness, the
39 implementing agency has invited by publication for three (3) consecutive weeks in a
40 newspaper of general circulation, as well as websites of the PPP Center and of the
41 implementing agency, the submission of comparative proposals and no other
42 proposal is received for a period stated in the IRR of this Act, which period should
43 not be less than three (3) months nor more than six (6) months from the date of last
44 publication in a newspaper of general circulation. In the event another proponent
45 submits a superior counter-proposal within the period referred to above and it is
46 accepted by the appropriate Approving Body, the original proponent shall have the
47 right to outbid.

48
49 **SEC. 11.** Private Legal Assistance. – All the PBAC members and other public
50 officials providing services to the PBAC shall be authorized to engage the services
51 of private lawyers, or shall be provided with free legal assistance, where a civil,
52 criminal, or administrative action is filed against them by reason of the performance
53 of their official functions or duties, unless they are finally adjudged in such action or
54 proceeding to be liable for gross negligence or misconduct or grave abuse of
55 discretion.

1 **SEC. 12. Contract Termination.** – In the event that a contract is revoked,
2 cancelled or terminated, either contracting party shall compensate the other
3 pursuant to terms as defined in the contract.
4

5 **SEC. 13. Automatic Grant of Administrative Franchise, License or Permit.** –
6 Upon receipt of notice that that an Implementing Agency and a Project Proponent
7 have entered into a PPP contract, the regulator, licensing authority or LGUs shall
8 automatically grant in favor of the said project proponent an administrative franchise,
9 license permit, or any other form of authorization required for the implementation of
10 a PPP project subject to submission by the project proponent of the requirements by
11 the regulator, licensing authority or LGU and proof of payment of the appropriate
12 taxes and fees.
13

14 Any provision of law to the contrary notwithstanding, it shall be mandatory on
15 the part of the regulator, licensing authority or LGUs to accept and approve the
16 application for administrative franchise, license or permit. Failure to act on a proper
17 and complete application thereof within thirty (30) working days from receipt of the
18 same shall be deemed as approval thereof.
19

20 **SEC. 14. Expansion or Extension of an Existing Infrastructure Facility.** –
21 Subject to conditions specified in the IRR of this Act and upon prior approval by the
22 appropriate Approving Body, the project proponent of an existing PPP infrastructure
23 facility may be allowed to expand or extend the same even without further bidding;
24 Provided, the cost thereof shall not exceed twenty-five percent (25%) of the price-
25 adjusted original project cost; Provided, further, that any subsequent expansion or
26 extension shall no longer be allowed.
27

28 **SEC. 15. Contracts and Public Disclosure.** – PPP Contracts entered into under
29 this Act shall be considered public documents. However, any proprietary information
30 contained in the PPP contract and its annexes may be kept confidential for a limited
31 period, as may be determined by the implementing agency but not to exceed five (5)
32 years.
33

34 The determination of whether or not such contracts shall be kept confidential,
35 as well as the terms and duration of confidentiality, shall be the responsibility of the
36 implementing agency concerned. The implementing agency shall transmit to the
37 PPP Center for records and monitoring purposes, a copy of the duly executed
38 contract, within thirty (30) working days from its complete execution.
39

40 **SEC. 16. A. Prohibition on the Issuance of Temporary Restraining Orders or**
41 **Injunctions.** – No temporary restraining order, preliminary injunction or preliminary
42 mandatory injunction shall be issued by any court, except the Supreme Court,
43 against any implementing agency, its officials or employees, or any person or entity,
44 whether public or private acting under the government direction, to restrain, prohibit
45 or compel the following acts:
46

47 (a) Bidding, rebidding or declaration of failure of bidding of PPP projects,
48 either national or local;
49

50 (b) Qualification or disqualification of bidders;
51

52 (c) Awarding of PPP contract;
53

54 (d) Acceptance of any unsolicited PPP project proposal, even if not acted
55 upon by the implementing agency concerned under Section 8 of this Act;
56

1 (e) Acquisition, clearance, development of the right-of-way, site or location
2 of any PPP project;

3
4 (f) Construction, operation and maintenance of any PPP project;

5
6 (g) Commencement, execution, implementation, termination or rescission
7 of any PPP contract; and

8
9 (h) Undertaking or authorization of any other lawful activity necessary for
10 such PPP project or contract.

11
12 Provided, that effectiveness of the temporary restraining order, preliminary
13 injunction or preliminary mandatory injunction issued by the Supreme Court shall not
14 exceed six (6) months.

15
16 B. Bond. – The applicant for such temporary restraining order, preliminary
17 injunction or preliminary mandatory injunction shall file a bond, in an amount to be
18 fixed by the court. The bond shall accrue in favor of the government if the court
19 should finally decide that the applicant was not entitled to the relief sought.

20
21 C. Void. – Any temporary restraining order, preliminary injunction or preliminary
22 mandatory injunction issued in violation of this section is void and of no force and
23 effect.

24
25 D. Application. – The foregoing prohibition shall apply in all disputes, cases, or
26 controversies instituted by any and all parties, including but not limited to cases filed
27 by bidders, implementing agencies or those claiming to have rights through such
28 bidders or implementing agencies involving PPP project or contract.

29
30 E. Liability. – In addition to civil and criminal liabilities as may be incurred under
31 existing laws, any judge who shall issue a temporary restraining order, preliminary
32 injunction or preliminary mandatory injunction in violation of this section, shall be
33 disciplined by the Supreme Court and suffer the penalty of removal from office.

34
35 **SEC. 17. Regulatory Boards.** – No regulatory body shall be allowed to enter
36 into any PPP contract for an Infrastructure Facility whose operation will be regulated
37 by such regulatory body.

38
39 **SEC. 18. Project Supervision.** – Every PPP project undertaken under the
40 provisions of this Act and its IRR shall be in accordance with the designs, plans,
41 specifications, standards, and costs approved by the implementing agency and
42 appropriate Approving Body, and shall be under the supervision of the implementing
43 agency concerned.

44
45 **SEC. 19. Investment Incentives.** – Among other incentives, PPP projects in
46 excess of One Billion Pesos (PhP1,000,000,000) shall be entitled to incentives as
47 provided by the Omnibus Investment Code, upon prior endorsement of the PPP
48 Center and registration by the project proponent with the Board of Investments.

49
50 **SEC. 20. Projects of National Significance.** – A. Incentives. – Upon certification
51 and recommendation by the ICC, and prior consultation with the Department of
52 Interior and Local Government (DILG), the President may classify certain projects,
53 such as energy, toll road, mass transit, water, sewerage and such other projects
54 undertaken under this Act and its IRR as projects of national significance, which
55 shall be entitled to the following incentives:

1 (a) All real properties which are actually and directly used for the project shall
2 be exempt from any and all real property taxes levied under Republic Act No. 7160;
3

4 (b) All local taxes, fees and charges imposed by a province, city or municipality
5 on the project proponent shall not exceed fifty percent (50%) of one percent (1%) of
6 gross sales or receipts of the preceding calendar year.
7

8 (c) The necessary business permits, including any renewals thereof, shall be
9 deemed to have been automatically granted or issued to the winning project
10 proponent upon payment of the required taxes and fees to the appropriate LGU.
11

12 B. Criteria. – For a project to qualify as a project of national significance, it shall
13 meet the following criteria:
14

15 (a) The total project cost falls within the threshold set by the ICC;
16

17 (b) The project has a direct economic impact which should not be less
18 than the threshold set by the ICC;
19

20 (c) The project has a direct positive impact on at least two (2) cities or
21 municipalities; and
22

23 (d) The project can create new jobs.
24

25 **SEC. 21. Exemption from Payment of Transfer Taxes.** – For all PPP projects,
26 the transfer of ownership of infrastructure facility to the implementing agency shall
27 be exempt from capital gains tax, documentary stamp tax and all taxes and fees,
28 whether from national or local, related to the transfer thereof.
29

30 **SEC. 22. PPP Center.** – A. Functions. – To achieve the goals of this Act, the
31 PPP Center is hereby institutionalized. It is hereby authorized to adopt its current
32 organizational structure, absorb its existing employees, and upgrade its human
33 resource component, as may be necessary, towards a more efficient and effective
34 performance of the following functions:
35

36 (a) Assist implementing agencies in identifying, developing, prioritizing and
37 maintaining a pipeline of PPP projects;
38

39 (b) Provide advisory services, technical assistance, trainings, and capacity
40 development to implementing agencies in all PPP-related matters;
41

42 (c) Manage and administer the PDMF as provided in Section 7 of this Act;
43

44 (d) Work with implementing agencies in setting procurement and
45 implementation timelines for approved PPP projects;
46

47 (e) Recommend plans, policies and implementation guidelines related to
48 PPP, in consultation with appropriate oversight committees or agencies,
49 implementing agencies, private sector and other relevant stakeholders;
50

51 (f) Facilitate, monitor, and evaluate the implementation of PPP programs
52 and projects developed by the implementing agencies;
53

54 (g) Report to the Office of the President and Congress on the
55 implementation of the PPP programs and projects of the government at the end of
56 each year;
57

- 1 (h) Serve as a link between the government and the private sector;
2
3 (i) Promote and market PPP programs and projects, in collaboration with
4 other government promotion agencies;
5
6 (j) Sit as member of NEDA-Infrastructure Committee (INFRACOM), ICC,
7 and other inter-agency bodies where a PPP project is a major concern;
8
9 (k) Issue advisory opinions and interpret the provisions of this Act and its
10 IRR, relating solely to technical aspects of PPP;
11
12 (l) Serve as the central repository of all executed PPP contracts and any
13 subsequent amendment or supplement thereto, including settlement agreements,
14 entered into by implementing agencies;
15
16 (m) Provide and transmit copies of duly executed PPP contracts to
17 Congress;
18
19 (n) Act as Secretariat to the PDMF Committee, PPP Governing Board,
20 and ICC insofar as PPP projects are concerned;
21
22 (o) Maintain an integrated projects' bank to serve as an interactive
23 database of all current and past projects;
24
25 (p) Such other functions as may be necessary to achieve the objectives
26 and purposes of this Act.
27

28 B. Positions and Compensation. – All positions of the PPP Center shall be
29 governed by a compensation and position classification system and qualification
30 standards consistent with the industry and duly approved by the Governance
31 Commission for Government-Owned or –Controlled Corporations (GCG) based on
32 comprehensive job analysis and audit of actual institutional duties and personal
33 responsibilities. The compensation plan shall be comparable with the prevailing
34 compensation plan of Bangko Sentral ng Pilipinas, GFIs and other GOCCs, and
35 shall be subject to periodic review by the GCG no more than once every two (2)
36 years, without prejudice to yearly merit review or increases based on productivity
37 and efficiency.
38

39 C. Attachment. – The PPP Center shall report directly to the PPP Governing
40 Board. It shall remain an attached agency under the administrative supervision of
41 the NEDA.
42

43 D. Head. – The PPP Center shall be headed by an Executive Director with the
44 rank equivalent to an Undersecretary, who shall be appointed by the President of the
45 Philippines, upon recommendation of the PPP Governing Board. The Executive
46 Director shall perform the following functions:
47

48 (a) Undertake the day-to-day management and supervise the operations
49 of the PPP Center;
50

51 (b) Recommend to the PPP Governing Board such policies and measures
52 which he or she deems necessary for the effective exercise and discharge of the
53 powers and functions of the PPP Center;
54

55 (c) Sit as an ex-officio member of the PPP Governing Board, INFRACOM,
56 ICC and other inter-agency bodies where a PPP project is a major concern; and
57

1 (d) Perform such other functions as may be assigned by the PPP
2 Governing Board.

3
4 **SEC. 23. A. PPP Governing Board.** – The PPP Governing Board is hereby
5 created, referred to as the Board, which shall be the overall policy-making body for
6 all PPP-related matters, including the PDMF. It shall be responsible for setting the
7 strategic direction of PPP programs and projects and in creating an enabling policy
8 and institutional environment for PPP.

9
10 The Board shall be composed of the following:

- 11 (a) Secretary of Socio-economic Planning as Chairperson;
12
13 (b) Secretary of Finance as Vice-Chairperson;
14
15 (c) Secretary of Budget and Management;
16
17 (d) Secretary of Justice;
18
19 (e) Secretary of Trade and Industry;
20
21 (f) Executive Secretary;
22
23 (g) Executive Director of PPP Center; and
24
25 (h) Private sector Co-chairman of the National Competitiveness Council
26 (NCC).
27

28
29 **B. Alternates.** – The principal members of the Board may designate their
30 respective alternates, who shall be the officials next-in-rank to them, and whose acts
31 shall be considered the acts of their principals.

32
33 **C. Quorum.** – The presence of the Chairperson with four (4) other members of
34 the Board shall constitute a quorum and a majority vote of the members present
35 shall be necessary for the adoption of any issuance, order, resolution, decision or
36 other act of the Board in the exercise of its functions. The Board shall act as a
37 collegial body. In the conduct of meetings, the Chairperson shall not vote except to
38 break a tie.

39
40 **D. Action.** – The Board shall act on any matter for its consideration not later
41 than thirty (30) days from the date of submission thereof.

42
43 **E. Honoraria.** – The members of the Board shall be entitled to honoraria based
44 on existing government accounting and auditing rules and regulations.

45
46 **SEC. 24. Mandatory Inclusion of Alternative Dispute Resolution Mechanisms in**
47 **PPP Contracts.** – All PPP contracts shall include provisions on the use of alternative
48 dispute resolution mechanisms. Subject to existing laws, the contracting parties shall
49 be given complete freedom to choose which venue and forum shall govern their
50 dispute, as well as the rules or procedures to be followed in resolving the same.

51
52 **SEC. 25. Funding of Contingent Liabilities Arising from PPP Projects.** – To
53 ensure fiscal sustainability, enhance ability of the implementing agency to discharge
54 its obligations under risks allocated to it, and improve terms of financing of PPP
55 projects, there is hereby created a Contingent Liabilities Fund which shall be
56 financed through dedicated budgetary appropriations and contributions from the
57 budgets of implementing agencies. It may also be sourced from bid premiums. The

1 fund will provide a reliable pool from which disbursements on government
2 obligations on liabilities that have materialized can be drawn. As such any
3 appropriations and contributions to the fund are permanently appropriated and will
4 not revert to the general fund if not disbursed during the life of the project. The fund
5 shall be administered by the Department of Finance following fiduciary standards for
6 fund management. The operations of the fund can be enhanced through Official
7 Development Assistance.

8
9 As part of the budget submission, the Department of Finance shall submit an
10 annual report on the status of this fund to Congress. Proceeds of the fund shall be
11 invested in risk-free highly liquid assets. The governance structure, specific functions
12 and responsibilities related to the operations of the said fund will be specified in the
13 IRR of this Act.

14
15 **SEC. 26. Miscellaneous Provisions. –**

16
17 (a) Joint Venture Agreements. – For joint venture arrangements, the
18 ownership of the infrastructure facility may be transferred to either the implementing
19 agency or to the project proponent; provided, that in the latter case, the transfer shall
20 be made under competitive market conditions; provided further, that the equity
21 contribution of the implementing agency in a joint venture corporation shall in no
22 case exceed fifty percent (50%) of the outstanding capital stock of the said
23 corporation; and provided finally, that the return on investment of either party shall
24 be in proportion to their respective contribution.

25
26 (b) Recovery of Investment. – As may be agreed in the PPP contract, the
27 project proponent may be allowed to collect tolls, fees, rentals, or charges, engage
28 in commercial development, receive viability gap funding, and receive direct
29 government payments, among others, to recover investment.

30
31 (c) Wind-up and Transfer Measures. – The PPP contract shall provide, as
32 may be appropriate, for:

33
34 (i) Mechanisms and procedures for the transfer of assets to the
35 implementing agency;

36
37 (ii) The compensation to which the project proponent may be entitled in
38 respect of assets transferred to the implementing agency, or to a successor, or
39 purchased by the implementing agency;

40
41 (iii) The transfer of technology required for the operation of the
42 infrastructure facility;

43
44 (iv) The training of the implementing agency's personnel or of a successor
45 in the operation and maintenance of the infrastructure facility; and

46
47 (v) The provision, by the project proponent, of a warranty that the
48 infrastructure facility meets the project technical specifications, agreed system
49 features, and performance standards and services for a certain period as may be
50 defined in the IRR of this Act after the transfer of the infrastructure facility to the
51 implementing agency or to a successor.

52
53 (d) Prescription. – No one shall in any proceedings before any court or
54 tribunal allege the invalidity of any PPP contract on the ground of non-compliance
55 with the provisions of this Act or its IRR after a period of one (1) year has elapsed
56 from the signing of the PPP contract.

57

1 (e) Construction. – If the Person, whether or not the Project Proponent,
2 that shall actually perform the Construction of the Infrastructure Facility is a
3 foreigner, such Person shall hire Filipino employees, if available, throughout the
4 period of Construction.

5
6 (f) Operation. – The Person, whether or not the Project Proponent, that
7 shall actually operate and maintain the Infrastructure Facility, including but not
8 limited to the collection of tolls, fees, rentals or charges from users of the
9 Infrastructure Facility, must be registered with the Securities and Exchange
10 Commission

11
12 **SEC. 27.** Implementing Rules and Regulations. – The NEDA, DOF, DBM,
13 DPWH, DILG, Department of Justice, Department of Trade and Industry, Office of
14 the President, Department of Transportation and Communications, Department of
15 Environment and Natural Resources, PPP Center and private sector Co-chairman of
16 the NCC shall constitute the IRR Committee. Within sixty (60) days from the
17 effectivity of this Act, the PPP Center shall formulate and prescribe, in consultation
18 with the IRR Committee, after public hearing and publication as required by law, the
19 rules and regulations to implement the provisions of this Act. The IRR shall be
20 approved by the PPP Governing Board.

21
22 From time to time the PPP Governing Board may instruct the PPP Center, in
23 consultation with the IRR Committee, to conduct, formulate and prescribe, after due
24 public hearing and publication, amendments to the IRR, consistent with the
25 provisions of this Act.

26
27 **SEC. 28.** Transitory Provisions. – All unexpended funds for the calendar year,
28 properties, equipment, contracts and records of the PPP Center are hereby retained.
29 The amount necessary to carry out the organizational changes of PPP Center
30 provided in this Act shall be determined by the PPP Governing Board.
31 Appropriations for succeeding years shall be incorporated in its budget proposals for
32 Congressional action.

33
34 All officials and employees of the PPP Center shall be retained and shall not
35 suffer any loss of seniority or rank or decrease in emoluments.

36
37 **SEC. 29.** Repealing Clause. – Republic Act No. 7718, Republic Act No. 6957,
38 Sec. 3(a) of Presidential Decree (PD) No. 1112, Section 2 of PD No. 1894, and
39 Executive Order (EO) No. 08 (s. 2010) as amended by EO 136 (s. 2013), EO 78 (s.
40 2012), Section 8 of EO No. 423 (s. 2005), 2013 Revised Guidelines and Procedures
41 for Entering Into Joint Venture Agreements Between Government and Private
42 Entities, Joint Venture Guidelines issued by LGUs, and PPP Codes issued by LGUs,
43 are hereby repealed. All other laws, rules and regulations or parts thereof
44 inconsistent with the provisions of this Act are hereby repealed or modified
45 accordingly.

46
47 **SEC. 30.** Separability Clause. – If any provision of this Act is held invalid, the
48 other provisions not affected thereby shall continue in operation.

49
50 **SEC. 31.** Effectivity Clause. – This Act shall take effect fifteen (15) days after its
51 publication in at least two (2) newspapers of general circulation.

52
53 Approved.