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

SENATE OF THE PHILIPPINES
OFFICE OF THE SECRETARY
RECEIVED
DATE: JUL 04 2016
TIME: 8:20 am
BY:
BILLS & INDEX

SENATE

S.B. No. 228

Introduced by Senator FRANKLIN M. DRILON

AN ACT
INSTITUTIONALIZING AND STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS, AND APPROPRIATING FUNDS THEREFOR

EXPLANATORY NOTE

The PPP Act seeks not only incorporation of the lessons learned from the past and adoption of the best practices in Public-Private Partnerships, but it also aims to accelerate infrastructure development in the country.

The proposed measure adopts a policy of full disclosure of PPP projects and contracts. Under the proposed measure, the PPP Center is also made directly responsible for giving the public and Congress with adequate and timely information about PPP projects.

The bill addresses the impact of local taxes to PPP projects of national significance. The uncertainty of imposition of local taxes particularly real property taxes make the project costly and less attractive to the private sector. Hence, the bill provides for an exemption of projects of national significance from payment of real property tax.

Another purpose of the bill is to foster competitiveness and transparency in unsolicited proposals. The sixty-working-day challenge period under the existing BOT Law is too short for interested challengers to submit their counter-proposals in an unsolicited project. Thus, the PPP Act proposes to extend the challenge period to a maximum period of six months. Additional option is also being proposed under the Act wherein the implementing agencies may be allowed to convert unsolicited proposal into a solicited project and offer it as basis for competitive bidding, subject to reimbursement of project development cost in an amount not to exceed 3% of the project cost. This way, the government will realize the full benefits of competitive bidding.

The other salient features are as follows:

- Institutionalization of tested and proven initiatives and governance structures such as the Project Development and Monitoring Facility (PDMF), PPP Governing Board, and PPP Center;
- Expansion of the coverage of PPP by including Joint Venture and Operation and Maintenance contracts;
- Provision of clearer protests protocol or appeal mechanism in all stages of the procurement process;
- Prohibition of the issuance by courts, except the Supreme Court, of temporary restraining orders, preliminary injunction or preliminary mandatory injunction against any implementing agency, its officials or employees, or any person or entity, whether public or private acting under the government direction;
- Prohibition against regulatory bodies from entering into any PPP contract that they regulate; and
- Mandatory inclusion of Alternative Dispute Resolution (ADR) Mechanisms in all PPP Contracts.

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

FRANKLIN M. DRILON
Senator

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

SECTION 1. *Short Title.* This Act shall be known as the "*Public-Private Partnership Act*".

SEC. 2. *Declaration of Policy.* It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development, create an enabling environment for Public-Private Partnerships (PPP), and provide the most appropriate incentives to mobilize private resources for the purpose of financing, design, construction, operation and maintenance of infrastructure projects and services normally financed and undertaken by the government. Such incentives, aside from financial incentives as provided by law, shall include provision of liberalized government regulations and procedures in support of the private proponent.

The State recognizes the long-term nature of private investment in infrastructure projects and mitigation of risks by ensuring that the validity and enforceability of contracts are respected through the due process of law.

The State protects the public interest by ensuring fair and reasonable pricing and timely delivery of quality infrastructure, goods and services through equitable risk allocation inherent in projects implemented under this Act.

The State affirms open, transparent and competitive selection as the central tenet of government procurement in securing private investment in public infrastructure projects. It shall secure private investments through transparent and competitive selection process and bidding procedures.

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

a. *Approving Body* refers to an entity authorized to approve PPP projects in accordance with Section 7 of this Act;

b. *Availability-based PPP* refers to a PPP where the implementing agency commits to make predetermined payments for contractually-defined performance delivery;

c. *Concession-based PPP* refers to a PPP where the implementing agency grants the project proponent the right to recover its investment, operating and financing costs by charging the public a user fee or tariff;

d. *Construction* refers to rehabilitation, improvement, expansion, alteration, installation, building of a new infrastructure facility, and related works and activities, including the necessary supply of equipment, materials, labor and services and related items;

e. *Contingent Liability* refers to obligations of the government arising from a valid PPP contract whose occurrence, timing, and amount depend on some uncertain future event or circumstance;

f. *Contractor* refers to any person, who may or may not be the project proponent, and who shall undertake the actual construction of an infrastructure facility of a PPP project;

g. *Cooperation Period* refers to the period of operation of an infrastructure facility;

h. *Facility Operator* refers to a person registered with the Securities and Exchange Commission or Department of Trade and Industry, who may or may not be the project proponent, who is responsible for all aspects of operation and maintenance of an infrastructure facility, including the collection of tolls, fees, rentals or charges from facility users;

i. *Government Undertakings* refer to any form of support, contribution, assistance, Viability Gap Funding (VGF), among others, which the government may provide to a solicited PPP project;

j. *Grantors* refer to an implementing agency and another government agency that own the project assets or franchise;

k. *Implementing Agency* refers to any of the various units of the Government of the Republic of the Philippines, including a department, bureau, office, instrumentality, government owned or controlled corporation (GOCC) as defined under Republic Act No. 10149, otherwise known as GOCC Governance Act of 2011, state universities and colleges (SUCs), or a local government or a distinct unit therein;

l. *Infrastructure Facility and Related Service* refers to any facility and infrastructure related service identified by the government in relation to or as necessary for the discharge of its functions, whether governmental or proprietary:

   i. infrastructure facility – includes power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications facilities, railroads and railways, transport systems, reclaimed land, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, information technology systems and infrastructure, education and health facilities, sewerage, drainage, and

   ii. infrastructure related service – includes dredging, climate change mitigation and adaptation measures and other related services;

m. *Public-Private Partnership* refers to a contractual arrangement between the implementing agency and the project proponent for the financing, design, construction, operation, and maintenance, or any combination thereof, of an infrastructure facility, in which the project proponent bears significant risk, management responsibility, or both;

n. *Person* refers to an individual, sole proprietorship, partnership, corporation or any other form of organization, whether domestic or foreign;

o. *Project Cost* refers to total capital cost, financing and other expenses for the design, construction, operation, and maintenance of an infrastructure facility of a PPP project;

p. *Project Proponent* refers to the private person who shall have contractual responsibility to undertake a PPP project;

q. *Rate of Return* refers to the project proponent's expected return from the project: *Provided,* That in case of an unsolicited proposal, the appropriate rate of return shall be determined by the appropriate Approving Body prior to the call for proposals based on the prevailing cost of capital in the domestic and international markets, the risk profile and the gearing ratio;

r. *Services* refer to services for or related to infrastructure facilities such as construction supervision, management, operation and maintenance and related services, and other technical services, which may be included as part of a PPP project;

s. *Solicited PPP Project* refers to priority projects identified by the implementing agency;

t. *Unsolicited PPP Project* refers to a project proposal submitted by a private person, which is not in response to a formal solicitation or request issued by the implementing agency;

u. *Viability Gap Funding (VGF)* refers to such financial support the government may provide to a concession-based PPP project with the objective of making user fees affordable while improving the commercial attractiveness of the project, excluding costs of right-of-way, resettlement and real estate taxes.

SEC. 4. *Contractual Arrangements.* PPP Projects may be undertaken through any of the following contractual arrangements:

a. *Build-and-Transfer* refers to a contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure facility and after the completion thereof, turns it over to the implementing agency concerned, which shall pay the project proponent on an agreed schedule its total investments expended on the project, plus a rate of return thereon. This arrangement may be employed in the construction of any infrastructure facility, including critical facilities which, for security or strategic reasons, must be operated directly by the government;

b. *Build-Lease-and-Transfer* refers to a contractual arrangement whereby a project proponent undertakes to finance and construct an infrastructure facility and upon its completion turns it over to the implementing agency concerned on a lease arrangement for a cooperation period, after which ownership thereof is automatically transferred to the implementing agency concerned;

c. *Build-Own-and-Operate* refers to a contractual arrangement whereby a project proponent is authorized to undertake a PPP project, specifically to finance, construct, own, operate and maintain an infrastructure facility from which the project proponent is allowed to recover its total investment, operating and maintenance costs plus a return thereon by collecting tolls, fees, rentals or other charges from facility users;

d. *Build-Operate-and-Transfer* refers to a contractual arrangement whereby the project proponent undertakes a PPP project and transfers ownership of the infrastructure facility to the implementing agency at the end of the cooperation period;

e. *Build-Transfer-and-Operate* refers to a contractual arrangement whereby the implementing agency contracts out the construction of an infrastructure facility to the project proponent. Once the facility is commissioned satisfactorily, ownership is transferred to the implementing agency. The project proponent, however, operates the infrastructure facility on behalf of the implementing agency;

f. *Contract-Add-and-Operate* refers to a contractual arrangement whereby, the project proponent adds to an existing infrastructure facility which it is renting from the government. It operates the expanded infrastructure facility over an agreed cooperation period. There may, or may not be, a transfer arrangement in regard to said facility;

g. *Develop-Operate-and-Transfer* refers to a contractual arrangement whereby favorable conditions external to a new PPP project which is to be built by a project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values;

h. *Joint Venture* refers to a contractual arrangement whereby a private person or a group of private persons, and an implementing agency, contribute money, services, assets, or a combination of any or all of the foregoing, to undertake a PPP project, with the intention to share profits, risks and losses. Assets may include equipment, land, intellectual property or anything of value;

i. *Operations and Maintenance Contract* refers to a contractual arrangement whereby the project proponent undertakes the day-to-day operation and maintenance of an infrastructure facility owned by the implementing agency. The project proponent shall undertake the acquisition or provision and upgrading of equipment, systems and other items related to operation and maintenance. The project proponent shall be compensated in the form of a performance-based management or service fee during the cooperation period;

j. *Rehabilitate-Operate-and-Transfer* refers to a contractual arrangement whereby an existing infrastructure facility is turned over to the project proponent to refurbish, improve, operate and maintain for a cooperation period, at the expiry of which the ownership of the facility is transferred to the implementing agency; and

k. *Supply-and-Operate* refers to a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the government so requires, operates such facility. Foreign firms who are allowed to operate the facility shall provide technology transfer and training to Filipino nationals.

Other variations may be allowed upon prior approval by the Investment Coordinating Committee (ICC).

SEC. 5. *Authority of Implementing Agencies.* Implementing agencies, in accordance with their respective charters, are hereby authorized to undertake PPP projects with any project proponent in accordance with the provisions of this Act.

In undertaking a PPP project under this Act, a GOCC or any of its subsidiaries shall secure the approval of the head of department or agency to which the GOCC is attached. If the procurement thereof is undertaken by the department or agency, the governing board of the GOCC shall adhere to the approval of the Approving Body and shall give its full cooperation in bidding the project.

SEC. 6. *Priority Projects.* Priority projects that will be implemented under this Act shall be consistent with the Philippine Development Plan or its equivalent at the local level.

The implementing agencies shall submit their list of PPP projects or any update thereto to the PPP Center for information. Each proposed PPP project to be implemented under this Act shall be subject to the approval of the Approving Body.

The PPP Center shall ensure that Congress and the general public are provided with adequate, timely and relevant information pertaining to these priority projects: *Provided,* That the release of proprietary information, which shall be defined in the IRR of this Act, is not contrary to existing laws.

SEC. 7. *Approval of PPP Projects.* The approval of PPP projects under this Act shall be in accordance with the following:

a. National Projects – National PPP projects shall be approved by the ICC or by the National Economic Development Authority (NEDA) Board, or both, depending on the project cost as prescribed in the IRR of this Act. Such approval shall be followed by the implementing agency or grantor concerned.

   For national projects that have impact on a particular region, the implementing agency shall secure the endorsement of the concerned Regional Development Council (RDC) prior to submitting the project for approval to the Approving Body. The RDC shall have thirty (30) days from receipt of the request of the implementing agency within which to issue its endorsement; otherwise, the same shall be deemed automatically endorsed by the RDC.

b. Local Projects – Local PPP projects shall be approved by the local sanggunians and, depending on the project cost as may be prescribed in the IRR, confirmed by the local development councils, ICC, and the NEDA Board.

   The confirmation of the project by the local development council concerned shall be based on a review of the project documents submitted to it by the local government unit concerned, which includes the feasibility study and the draft contract on the project, and shall ensure that said project documents are in full compliance with the requirements set forth under this Act:*Provided,*That, any concerned reviewing officer/s found in violation of this provision shall be administratively liable with grave neglect of duty and shall be dealt with in accordance with existing laws.

   Any act on the part of the local government unit concerned and its responsible officials, or concerned officers of the private project proponent, which results to or is aimed at downgrading the category of the project cost based on its total cost under the IRR of this Act for the purpose of evading the required approval under the appropriate category shall be dealt with administratively and criminally under this Act and its IRR, and other existing applicable laws. Such act committed by the private project proponent and its concerned officers shall cause the rescission of its contract for the said project without compensation and shall be perpetually disqualified from participating in any bidding, or other contractual arrangement, for any government project.

SEC. 8. *Project Development and Monitoring Facility (PDMF).* The PDMF is hereby established and shall be used for the procurement of advisory and support services related to the preparation, structuring, probity management, procurement, financial close, and monitoring of implementation of PPP projects.

a. *Funding Source.* The PDMF Fund referred to under Executive Order (EO) No. 8, series of 2010, as amended by EO No. 136, series of 2013, shall be transferred to the PDMF under this Act. The PDMF may be funded through and such amount as may be needed and included in the General Appropriations Act, Official Development Assistance or other sources.

b. *Institutional Arrangement.* The PDMF shall be managed and administered by the PPP Center as a revolving fund. In order to sustain the PDMF, the PPP Center may collect and receive fees and recover costs expended through PDMF in accordance with the guidelines to be approved by the PPP Governing Board. Such amount shall be retained and authorized to be used by the PPP Center for the purposes indicated herein.

   A PDMF Committee is hereby created which shall approve applications for PDMF support submitted by implementing agencies. It shall be composed of representatives from the National Economic and Development Authority (NEDA), Department of Finance (DOF), Department of Budget and Management (DBM) and the PPP Center.

   The PPP Center shall serve as Secretariat for the PDMF Committee.

c. *Procedure.* The procurement of consulting services for the PDMF shall be conducted through Republic Act (RA) 9184, otherwise known as the Government Procurement Reform Act, and its associated implementing rules and regulations (IRR), subject to existing laws on the practice of professions reserved to Filipino nationals. An open registry of consultants may be established for ready availability of consulting expertise. Registration is not tantamount to a finding of eligibility, and non-registered consultants shall be allowed to bid. The procedures for such procurement shall be prescribed in the IRR of this Act, consistent with R.A. No. 9184 and its associated IRR.

The PPP Center is not precluded from adopting a set of rules for the engagement and consulting services funded by an international financing institution or through official development assistance.

Subject to approval of the PPP Governing Board, the PDMF Committee shall also formulate, prescribe and recommend policies, procedures and guidelines for the use of PDMF and recovery of costs charged to the fund.

SEC. 9. *Unsolicited Proposals*. Unsolicited proposals may be considered for projects that are not part of the list of priority projects or which involve a new concept or technology.

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

a. Accept the unsolicited proposal on a negotiated basis, subject to the following conditions:

   (i) No direct government guarantee, VGF, government subsidy or equity, or right-of-way is required; *Provided*, That the implementing agency shall facilitate the acquisition of the right-of-way; and

   (ii) Guided by the principles of transparency and competitiveness, the implementing agency has invited the submission of comparative proposals by publication for three (3) consecutive weeks in a newspaper of general circulation, as well as posting in the websites of the PPP Center and of the implementing agency: *Provided,* That, no other proposal is received within a period not less than three (3) months nor more than six (6) months from the date of last publication in a newspaper of general circulation. In the event another proponent submits a superior counter-proposal within the period referred to above and it is accepted by the Approving Body, the original proponent shall have the right to outbid.

b. Use the unsolicited proposal as the basis for public bidding as provided in Section 10 of this Act. Upon approval by the Approving Body, the original proponent thereof shall be reimbursed of the cost incurred in the preparation of the proposal, such as the cost of any feasibility study undertaken: *Provided*, That the reimbursement is:

(i) in an amount specified in the IRR of this Act, not to exceed three (3%) percent of the project cost excluding those which are borne by the implementing agency, such as, the cost of right-of-way acquisitions; and

(ii) paid in full by the winning project proponent as a requirement for the award of the contract.

c. Reject the proposal.

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

Within ten (10) working days from receipt of the unsolicited proposal, the implementing agency shall inform the PPP Center in writing of such receipt and furnish it with a copy of the proposal. The PPP Center shall provide assistance to the implementing agency in the evaluation of unsolicited proposal.

SEC. 10. *Public Bidding of Projects.*

a. Upon approval of PPP projects as mentioned in Section 7 of this Act, the head of the implementing agency concerned shall immediately cause the publication of a notice inviting all prospective project proponents to participate in a transparent and competitive public bidding, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation and in at least one (1) local newspaper which is circulated in the region, province, city or municipality where the project is implemented. The notice must also be posted continuously in the websites of the implementing agency and the PPP Center.

The public bidding shall be conducted under a single or two-stage system. The pre-qualification documents, technical, and financial proposals shall be submitted in at least three (3) separate envelopes. The procedures for public bidding shall be transparent and competitive, including the conduct of one-on-one meetings with prequalified bidders. The contract shall be awarded to the bidder who has passed the pre-qualification stage after having satisfied the minimum financial, organizational, and legal standards required under this Act; has passed the technical proposal evaluation; and, has submitted the most favorable financial bid based on the parameters defined in the bid documents.

In case of a single complying and responsive bidder, the implementing agency may award the PPP contract to that bidder upon its compliance with the post-award requirements under the bidding rules of the PPP project.

b. A bid is considered a single complying and responsive bid submission if it falls under any of the following circumstances:

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

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

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

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

c. In all stages of the procurement process, the following protest protocol shall be strictly followed:

(i) Decisions of the Prequalification, Bids and Awards Committee (PBAC) may be questioned by filing a motion for reconsideration within a period prescribed in the IRR of this Act.

(ii) The decision of the PBAC on the motion for reconsideration in the immediately preceding paragraph may be further questioned by the filing of an appeal to the head of the implementing agency concerned and paying a non-refundable appeal fee in an amount equivalent to no less than ½ of 1% of the project cost within a period prescribed in the IRR of this Act.

If the head of the implementing agency in the immediately preceding paragraph is not a Department Secretary, the decision of the head of the implementing agency may be further questioned by filing an appeal to the Secretary of the Department to which the implementing agency is attached within a period prescribed in the IRR of this Act.

(iii) The decision of the Department Secretary in the immediately preceding paragraph (b) may be questioned by the filing of an appeal to the Office of the President.

d. PPP PBAC – The head of the implementing agency shall create a PPP PBAC which shall be responsible for all aspects of the pre-bidding and bidding process in the case of solicited proposals, and for the comparative bidding process in the case of unsolicited proposals. The PPP PBAC shall be chaired by at least a third ranking regular official of the said agency and its composition shall be specified in the IRR of this Act: *Provided*, That the PPP PBAC constituted for national PPP projects shall also include other relevant government agencies as may be determined in the IRR of this Act.

In no case shall any appeal taken from any decision rendered pursuant to this Act stay or delay the bidding process. An appeal must first be resolved before any project is awarded.

If the winning bidder fails to comply with any post-award requirement or fails to enter into a contract with the implementing agency, the latter may proceed to negotiate with the next technically and financially qualified bidder, without prejudice to availment of other legal remedies by the implementing agency such as the forfeiture of bid security, the withdrawal of Notice of Award, or both.

SEC. 11. *Private Legal and Medical Assistance.* All the PPP PBAC members and other public officials providing services to the PPP PBAC shall be authorized to engage the services of private lawyers, or shall be provided with free legal assistance, where a civil, criminal, or administrative action is filed against them by reason of the performance of their official functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion. The PPP PBAC members shall also be entitled to medical assistance for injuries incurred in the performance of their functions.

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

SEC. 13. *Issuance of Administrative Franchise, License or Permit.* Once a PPP contract is duly executed, the regulator, licensing authority or LGUs shall automatically grant in favor of the project proponent an administrative franchise, license permit, or any other form of authorization required for the implementation of a PPP project subject to submission by the project proponent of the requirements by the regulator, licensing authority or LGU.

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

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

SEC. 15. *Contracts and Public Disclosure.* Copies of all PPP contracts concluded under this Act shall be considered public documents. However, any proprietary information or information relating to security or national security matters contained in the PPP contract and its annexes may be kept confidential for a limited period, as may be determined by the implementing agency but not to exceed five (5) years.

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

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

a. Bidding, rebidding or declaration of failure of bidding of PPP projects, either national or local;
b. Qualification or disqualification of bidders;
c. Awarding of PPP contract;
d. Acceptance of any unsolicited PPP project proposal, even if not acted upon by the implementing agency concerned under Section 9 of this Act;
e. Acquisition, clearance, development of the right-of-way, site or location of any PPP project;
f. Construction, operation and maintenance of any PPP project;
g. Commencement, execution, implementation, termination or rescission of any PPP contract; and
h. Undertaking or authorization of any other lawful activity necessary for such PPP project or contract:

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

Any temporary restraining order, preliminary injuction or preliminary mandatory injunction issued in violation of this Section is void and of no force and effect.

The foregoing prohibition shall apply in all disputes, cases, or controversies instituted by any and all parties, including cases filed by bidders, implementing agencies or those claiming to have rights through such bidders or implementing agencies involving a PPP project or contract.

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

SEC. 17. *Assignment of Assets for PPP Projects*. A regulatory agency that owns public infrastructure or right-of-way that is intended for a PPP project shall assign the same to the department exercising administrative supervision over it, or to the department to which it is attached, in order that such department may enter into a PPP contract involving such public infrastructure or right-of-way.

SEC. 18. *Project Supervision*. Every PPP project undertaken under the provisions of this Act shall be in accordance with the designs, plans, specifications, standards, and costs approved by the implementing agency and Approving Body, and shall be under the supervision of the implementing agency concerned.

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

SEC. 20. *Projects of National Significance*. Upon certification and recommendation by the ICC, and prior consultation with the Department of Interior and Local Government (DILG) and the LGU concerned, the President may classify certain projects, such as energy, toll road, mass transit, water, sewerage and such other projects undertaken under this Act as projects of national significance, which shall be entitled to the following incentives:

a. All real properties which are actually and directly used for the project shall be exempt from any and all real property taxes levied under Republic Act No. 7160, otherwise known as the Local Government Code;
b. All projects of national significance shall likewise be exempt from any and all local taxes, fees and charges; and
c. Automatic grant or issuance of the necessary business permits, including renewals thereof, in favor of the winning project proponent.

For a project to qualify as a project of national significance, it shall meet the following criteria: (i) the total project cost falls within the threshold set by the ICC; (ii) the project has direct and indirect economic impact which shall not be less than the threshold set by the ICC; (iii)the project will have direct and indirect economic impact beyond the LGU where it is located; and (iv) the project can create new jobs.

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

SEC. 22. *Institutionalization of PPP Center*. To achieve the goals of this Act, the PPP Center created under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, is hereby institutionalized. It is hereby authorized to adopt its current organizational structure, absorb its existing employees, and upgrade its human resource component, as may be necessary. Towards a more efficient and effective performance of its mandate, the PPP Center shall have the following powers and functions:

a. Assist implementing agencies in identifying, developing, prioritizing and maintaining a pipeline of PPP projects;
b. Provide advisory services, technical assistance, trainings, and capacity development to implementing agencies in all PPP-related matters, and act as a procurement agent upon the request of an implementing agency;
c. Manage and administer the PDMF as provided in Section 8 of this Act;
d. Work with implementing agencies in setting procurement and implementation timelines for approved PPP projects;

e. Recommend plans, policies and implementation guidelines related to PPP, in consultation with appropriate oversight committees or agencies, implementing agencies, private sector and other relevant stakeholders;

f. Facilitate, monitor, and evaluate the implementation of PPP programs and projects developed by the implementing agencies;

g. Report to the Office of the President and Congress on the implementation of the PPP programs and projects of the government at the end of each year;

h. Serve as a link between the government and the private sector;

i. Promote and market PPP programs and projects, in collaboration with other government promotion agencies;

j. Sit as member of NEDA-Infrastructure Committee (INFRACOM), ICC, and other inter-agency bodies where a PPP project is a major concern;

k. Issue advisory opinions and interpret the provisions of this Act and its IRR, relating solely to technical aspects of PPP;

l. Serve as the central repository of all executed PPP contracts and any subsequent amendment or supplement thereto, including settlement agreements, entered into by implementing agencies;

m. Review PPP contracts prior to execution, and provide and transmit copies of duly executed PPP contracts to Congress;

n. Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC insofar as PPP projects are concerned;

o. Maintain an integrated projects' bank to serve as an interactive database of all current and past projects;

p. Perform such other functions as may be necessary to achieve the objectives and purposes of this Act.

The PPP Center shall report directly to the PPP Governing Board and shall be attached to the NEDA for purposes of policy and program coordination.

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

The Board shall be composed of the following:

a. The Secretary of Socio-Economic Planning as Chairperson;
b. The Secretary of the Department of Finance as Vice-Chairperson;
c. The Secretary of the Department of Budget and Management;
d. The Secretary of the Department of Justice;
e. The Secretary of the Department of Trade and Industry;
f. The Secretary of the Interior and Local Government;
g. The Executive Secretary;
h. The Executive Director of PPP Center; and
i. The Private sector as Co-chairperson of the National Competitiveness Council (NCC), as members.

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

The Board shall act on any matter for its consideration not later than thirty (30) days from the date of submission thereof.

SEC. 24. *Executive Director.* The PPP Center shall be headed by an Executive Director with the rank equivalent to an Undersecretary, who shall be appointed by the President of the Philippines for a term of six years, upon recommendation of the PPP Governing Board: *Provided,* That the term of the first Executive Director appointed under this Act shall expire at noon of June 30, 2019 and the term of the next Executive Director shall commence on the said hour and date: *Provided further,* That in case a vacancy occurs before the expiration of the term, the person appointed to such vacancy shall serve only the unexpired term of the predecessor. The Executive Director shall perform the following functions:

a. Undertake the day-to-day management and supervise the operations of the PPP Center;
b. Recommend to the PPP Governing Board such policies and measures which he or she deems necessary for the effective exercise and discharge of the powers and functions of the PPP Center;
c. Sit as an ex-officio member of the PPP Governing Board, INFRACOM, ICC and other inter-agency bodies where a PPP project is a major concern; and

d. Perform such other functions as may be assigned by the PPP Governing Board.

SEC. 25. *Mandatory Inclusion of Alternative Dispute Resolution (ADR) Mechanisms in PPP Contracts.* All PPP contracts shall stipulate therein the use of ADR mechanisms. The contracting parties shall be given complete freedom to choose which ADR mechanisms shall govern their dispute, as well as the rules or procedures to be followed in resolving the same.

SEC. 26. *Creation of a Public-Private Partnership (PPP) Contingent Liability Fund.* To ensure fiscal sustainability and negotiate better financing terms of PPP projects, there is hereby created a PPP Contingent Liability Fund to be used for the payment of contingent liabilities arising from PPPs in accordance to its contract terms.

The target amount in the PPP Contingent Liability Fund is to be determined by the Development Budget Coordination Committee (DBCC) using risk-adjusted methods or such other means that estimate the exposure of the Government of the Philippines to PPP contingent liabilities.

The PPP Contingent Liability Fund shall be funded from the following sources:

a. concession fees;
b. implementing agency reimbursements;
c. interest earnings from the contingent liability fund; and
d. National Government contributions.

National Government contributions shall cover only the difference between the target amount of the PPP Contingent Liability Fund, and the current value of the fund. The Department of Finance (DOF) shall regularly monitor and review the viability of the PPP Contingent Liability Fund in relation to the magnitude of PPP projects undertaken by government, and if necessary, recommend the increase in the target amount of the PPP Contingent Liability Fund and the reason therefore. All National Government contributions to the PPP Contingent Liability Fund shall be included in the proposed DOF budget.

When the value of the PPP Contingent Liability Fund is in excess of the target amount, the excess funds may, upon the recommendation of the DBCC, be transferred to the general fund of the National Government.

The implementing agency must seek confirmation from the DOF that the National Government can bear the additional contingent liabilities associated with the project, taking into consideration fiscal sustainability.

Further, to foster accountability and efficiency in implementing PPP projects, it is mandatory for implementing agencies to enter into a recourse agreement with the DOF before any payment can be drawn from the PPP Contingent Liability Fund for contingent liabilities that have materialized within contract terms.

The Bureau of the Treasury shall maintain the PPP Contingent Liability Fund in the Treasury Single Account. Interest earnings therefrom shall accrue to the PPP Contingent Liability Fund.

SEC. 27. *Penal Provision.* Any person, whether private individual or public officer or employee, who commits any of the acts hereunder proscribed, shall be punished by imprisonment from a minimum of three (3) years to a maximum of six (6) years and one (1) day:

a. Representation that the project proponent has the necessary capitalization to commence, complete and implement the project when the same is false in material respects;
b. Falsification or insertion of certain provisions in the execution copy of the contract which are materially and substantially different from the approved final draft contract.

SEC. 28. *Miscellaneous Provisions.*

a. *Build-and-Transfer and Social Infrastructure PPP Projects.* For PPP projects under the Build-and-Transfer scheme, as well as social infrastructure PPP projects, the Congress shall include the necessary appropriations to meet the financial obligations arising from such projects on the fiscal year when the obligation becomes due and demandable. Such appropriations shall be over and above the annual budget of the implementing agency.
b. *Joint Venture Agreements.* For joint venture arrangements, the ownership of the infrastructure facility may be transferred to either the implementing agency or to the project proponent: *Provided,* That in the latter case, the transfer shall be made under competitive market conditions: *Provided, further,* That the equity contribution of the

implementing agency in a joint venture corporation shall in no case exceed fifty percent (50%) of the outstanding capital stock of the corporation:*Provided, finally,* That the return on investment of either party shall be in proportion to their respective contribution.

c. *Recovery of Investment.* As may be agreed in the PPP contract, the project proponent may be allowed to collect tolls, fees, rentals, or charges, engage in commercial development, receive VGF, and receive direct government payments, among others, to recover investment.

d. *Wind-up and Transfer Measures.* The PPP contract shall provide, as appropriate, for:

   i. Mechanisms and procedures for the transfer of assets to the implementing agency;

   ii. The compensation to which the project proponent may be entitled in respect of assets transferred to the implementing agency, or to a successor, or purchased by the implementing agency;

   iii. The transfer of technology required for the operation of the infrastructure facility;

   iv. The training of the implementing agency's personnel or of a successor in the operation and maintenance of the infrastructure facility; and

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

e. *Prescription.* No one shall in any proceedings before any court or tribunal allege the invalidity of any PPP contract on the ground of non-compliance with the provisions of this Act after a period of one (1) year has elapsed from the signing of the PPP contract.

f. *Preferential Hiring of Filipino Workers.* For the construction stage of infrastructure facilities where the contractor is a foreigner, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available.

g. *Contracts, Procedures, And Authority Not Affected by this Act.* This Act shall not affect:

(i) PPP contracts entered into, and selection procedures undertaken, by implementing agencies prior to the effectivity of this Act in accordance with the relevant laws, regulations, guidelines, and ordinances; and

(ii) The authority of LGUs to enact their own PPP ordinances that are not inconsistent with this Act and its IRR.

SEC. 29. *Joint Congressional Oversight Committee.* A Joint Congressional Oversight Committee is hereby created to oversee the implementation of this Act. The Committee shall be composed of five (5) members each from the Senate and House of Representatives to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The Committee shall be jointly chaired by the respective Chairpersons of the House Committee on Public Works and Highways, the House Committee on Appropriations, the Senate Committee on Public Works, and the Senate Committee on Finance.

SEC. 30. *Implementing Rules and Regulations.* The members of the PPP Governing Board shall designate their respective representatives who shall constitute the IRR Committee. Within sixty (60) days from the effectivity of this Act, the PPP Center shall formulate and prescribe, in consultation with the IRR Committee, after public hearing and publication as required by law, the rules and regulations to implement the provisions of this Act. The IRR shall be approved by the PPP Governing Board.

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

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

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

SEC. 32. *Separability Clause.* If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation.

SEC. 33. *Repealing Clause.* Republic Act No. 6957, Republic Act No. 7718, Sec. 3(a) of Presidential Decree (PD) No. 1112, Section 2 of PD No. 1894, and EO No. 8 (s. 2010) as amended by EO 136 (s. 2013), EO 78 (s. 2012), Section 8 of EO No. 423 (s. 2005), 2013 Revised Guidelines and Procedures for Entering Into Joint Venture Agreements Between Government and Private Entities, Joint Venture Guidelines issued by LGUs, and PPP Codes issued by LGUs, are hereby repealed. All other laws, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 34. *Effectivity Clause.* This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or at least one (1) newspaper of general circulation.

Approved,