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SENATE

S.B. No. 2007



Office of the Secretary

'18 SEP 17 P2:27

INTRODUCED BY: SENATOR EMMANUEL D. PACQUIAO

RECEIVED

**AN ACT AUTHORIZING PUBLIC-PRIVATE PARTNERSHIP FOR THE  
PEOPLE (P4), APPROPRIATING FUNDS THEREFOR, AND FOR OTHER  
PURPOSES**

**EXPLANATORY NOTE**

The World Bank in its January 2018 Global Economic Prospects reports that the Philippines is expected to sustain robust economic growth in the next three years. The Washington-based multilateral lender adds that the country will continue to be the fastest-growing economy in the Association of Southeast Asian Nations (ASEAN) despite some stabilization of investment growth.

Given this scenario, the government still has the duty to find ways to continuously spur national economic growth amidst constraints on public resources. Accelerating spending on infrastructure is a viable option to achieve this goal. Hence, it must not cease to create opportunities that will lead to the country's infrastructure development with the end in view of generating jobs and reducing poverty.

One good alternative is turning to the private sector as source of additional funding. With this, there is a need to institutionalize the government's Public-Private Partnership (PPP) program to better serve the public.

For this purpose, we propose this measure to create an enabling environment for PPPs. Among others, this measure encourages PPPs in national and local infrastructure projects by giving more incentives to the proponents from the private sector that choose to partner with the government. At the same time, it upholds transparency by requiring full public disclosure of PPP projects and contracts. Ultimately, it seeks to protect public interest by providing affordable and necessary infrastructure projects and services.

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

EMMANUEL D. PACQUIAO

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

**Section 1. Short Title.** – This Act shall be known as the *Public-Private Partnership for the  
People (P4) Act of the Philippines*.

**Section 2. Declaration of State Policies.** – (a) Pursuant to Section 20, Article II of the 1987  
Philippine Constitution, it is the declared policy of the State to recognize the indispensable  
role of the private sector, encourage private enterprise, and provide incentives for needed  
investments to spur national economic growth and development, provide the most  
appropriate incentives to mobilize private resources for the purpose of financing the  
construction, operation and maintenance of infrastructure and development projects normally  
financed and undertaken by the government;

(b) In accordance with Sections 24 and 28, Article II of the 1987 Philippine  
Constitution, it is the declared policy of the State to recognize the vital role of  
communication and information in national building and adopt and implement a policy of full  
disclosure of all its transactions involving, and vested with, public interest; and

(c) P4 is a developmental, innovative, change and partnership strategy aimed at  
promoting the general welfare, inclusive growth and better quality of life of Filipinos.

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

**Contractual P4 Variants .** – The following are the various contractual variants that may be  
used in a P4:



1 *Build-and-Transfer (BT)* – A contractual arrangement whereby the Private Sector  
2 Proponent (PSP) undertakes the financing and construction of a given infrastructure or  
3 development facility, and after its completion, turns it over to the implementing agency  
4 which shall, in turn, pay the PSP, on an agreed schedule, its total investment expended on  
5 the project, plus a Reasonable Rate of Return thereon.  
6

7 *Build-Lease-and-Transfer (BLT)* – A contractual arrangement whereby a PSP is authorized  
8 to finance and construct an infrastructure or development facility and upon its completion,  
9 turns it over to the implementing agency on a lease arrangement for a fixed period, after  
10 which ownership of the facility is automatically transferred to the latter.  
11

12 *Build-Operate-and-Transfer (BOT)* – A contractual arrangement whereby the PSP  
13 undertakes the construction, including financing, of a given infrastructure or development  
14 facility, and the operation and maintenance thereof. The PSP operates the facility over a  
15 fixed term, during which it is allowed to charge facility users appropriate tolls, fees, rentals,  
16 and charges not exceeding those proposed in its bid, or as negotiated and incorporated in  
17 the contract, to enable the PSP to recover its investment, and its operating and  
18 maintenance expenses in the project. The PSP transfers the facility to the implementing  
19 agency at the end of the fixed term, which shall not exceed fifty (50) years.  
20

21 *Build-Own-and-Operate (BOO)* – A contractual arrangement whereby a PSP is authorized to  
22 finance, construct, own, operate and maintain an infrastructure or development facility  
23 from which the PSP is allowed to recover its total investment, operating and maintenance  
24 costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges  
25 from facility users. Under this project, the proponent who owns the assets of the facility  
26 may assign its operation and maintenance to a facility operator.  
27

28 *Build-Transfer-and-Operate (BTO)* – A contractual arrangement whereby the implementing  
29 agency contracts out the construction of an infrastructure or development facility to a PSP  
30 such that the contractor builds the facility on a turnkey basis, assuming cost overruns,  
31 delays, and specified performance risks. Once the facility is commissioned satisfactorily,  
32 title is transferred to the implementing agency; however, the operation thereof is retained  
33 by the PSP for a specified period of time which shall not exceed fifty (50) years.  
34

35 *Concession* – A contractual arrangement whereby the financing and construction of a new  
36 infrastructure or development facility and/ or rehabilitation of an existing facility is  
37 undertaken by the PSP after turnover thereof to it, and includes the operation,  
38 maintenance, management and improvement, if any, of the facility for a fixed term during  
39 which the PSP generally provides service directly to facility users and is allowed to charge  
40 and collect the approved tolls, fees, tariffs, rentals or charges from them. The implementing  
41 agency may receive a concession or franchise fee during the term of the contract and/ or  
42 other consideration for the transfer, operation or use of any facility. There may be a  
43 transfer of ownership of the asset or facility after the concession period has ended subject  
44 to rules of the COA.  
45



1 *Contract-Add-and-Operate (CAO)* – A contractual arrangement whereby the PSP adds to an  
2 existing infrastructure or development facility which it is leasing from the implementing  
3 agency and operates the expanded project over an agreed franchise period. There may or  
4 may not be a transfer arrangement with regard to the added facility provided by the PSP.  
5

6 *Develop-Operate-and-Transfer (DOT)* – A contractual arrangement whereby favorable  
7 conditions external to a new infrastructure or development facility to be built by a PSP are  
8 integrated into the arrangement by giving that entity the right to develop adjoining  
9 property, and thus, enjoy some of the benefits the investment creates, such as higher  
10 property or rent values.  
11

12 *Divestment or Disposition* – The transaction which takes away, deprives, withdraws the title  
13 to a property owned by the implementing agency and vesting ownership thereof to a PSP.  
14

15 *Joint Venture (JV)* – A contractual arrangement whereby a PSP or a group of private sector  
16 entities on one hand, and the implementing agency on the other hand, contribute money/  
17 capital, services, assets (including equipment, land, intellectual property or anything of  
18 value), or a combination of any or all of the foregoing. The implementing agency shall be a  
19 majority equity or shareholder while the PSP shall be minority equity or shareholder. Each  
20 party shall be entitled to dividends, income and revenues and will bear the corresponding  
21 losses and obligations in proportion to its share. Parties to a JV share risks to jointly  
22 undertake an investment activity in order to accomplish a specific, limited or special goal  
23 or purpose with the end view of facilitating private sector initiative in a particular industry  
24 or sector, and eventually transferring ownership of the investment activity to the PSP  
25 under competitive market conditions. It involves a community or pooling of interests in the  
26 performance of the service, function, business or activity, with each party having a right to  
27 direct and govern the policy in connection therewith, and with a view of sharing both  
28 profits and losses, subject to agreement by the parties.  
29

30 *Lease or Affermage* – A contractual arrangement providing for operation, maintenance, and  
31 management services by the PSP, including working capital and/ or improvements to an  
32 existing infrastructure or development facility leased by the PSP from the implementing  
33 agency for a fixed term. Under a lease, the PSP retains revenue collected from customers  
34 and makes a specified lease payment to the implementing agency. Under an affermage, the  
35 parties share revenue from customers wherein the PSP pays the contracting authority an  
36 affermage fee, which varies according to demand and customer tariffs, and retains the  
37 remaining revenue. The implementing agency may provide a purchase option at the end of  
38 the lease period.  
39

40 *Management Contract* – A contractual arrangement involving the management or provision  
41 by the PSP of operation and maintenance or related services to an existing infrastructure or  
42 development facility owned or operated by the implementing agency. The project  
43 proponent may collect tolls/ fees/ rentals and charges which shall be turned over to the  
44 implementing agency and shall be compensated in the form of a fixed fee and/ or  
45 performance based management or service fee during the contract term.  
46



1 *Rehabilitate-Operate-and-Transfer (ROT)* – A contractual arrangement whereby an existing  
2 facility is turned over to the PSP to refurbish, operate and maintain for a franchise period,  
3 at the expiry of which the legal title to the facility is turned over to the implementing  
4 agency.

5  
6 *Rehabilitate-Own-and-Operate (ROO)* – A contractual arrangement whereby an existing  
7 facility is turned over to the PSP to refurbish and operate, with no time limitation imposed  
8 on ownership. As long as the operator is not in violation of its franchise, it can continue to  
9 operate the facility in perpetuity.

10  
11 *Service Contract* – A contractual arrangement whereby the PSP shall provide a particular  
12 service to the implementing agency involving the latter's proprietary authority or to  
13 entities or corporation created by the implementing agency. The PSP shall be entitled to be  
14 paid a fee per unit of work done during the term of the contract.

15  
16 *Supply-and-Operate (SO)* – A contractual arrangement rider in any P4 Contract whereby the  
17 supplier of equipment and machinery for a given infrastructure or development facility, if  
18 the interest of the implementing agency so requires, operates the facility, providing, in the  
19 process, technology transfer and training to Filipino nationals.

20  
21  
22 *Cost Sharing* – This shall refer to the implementing agency's portion of capital expenses  
23 associated with the establishment of an infrastructure or development facility such as the  
24 provision of access infrastructure, right-of-way, and any partial financing of the project.

25  
26 *Credit Enhancement* – This shall refer to direct and indirect support to an infrastructure or  
27 development facility by the PSP and/or implementing agency, the provision of which is  
28 contingent upon the occurrence of certain events and/or risks, as stipulated in the P4  
29 contract. Credit enhancements are allocated to the party that is best able to manage and  
30 assume the consequences of the risk involved. Credit enhancements may include, but are  
31 not limited to, government guarantees on the performance or the obligation of the  
32 implementing agency under its contract with the PSP, subject to existing laws on indirect  
33 guarantees. Indirect Guarantees shall refer to an agreement whereby the implementing  
34 agency assumes full or partial responsibility for, or assists in, maintaining the financial  
35 standing of the PSP or project company in order that the PSP/ project company avoids  
36 defaulting on the project loans, subject to fulfilment of the PSP/ project company of its  
37 undertakings and obligations under the P4 contract.

38  
39 *Competitive Challenge or Swiss Challenge* – An alternative selection process wherein third  
40 parties or challengers shall be invited to submit comparative proposals on the financial  
41 aspect to an unsolicited proposal. Accordingly, the PSP who submitted the unsolicited  
42 proposal, or the original proponent, is accorded the right to match any superior offers  
43 given by a comparative PSP.

1 *Competitive Selection or Bidding or Open Competition* – Refers to a method of selection or  
2 procurement initiated and solicited by the implementing agency based on a transparent  
3 criteria, which is open to participation by any interested party.

4  
5 *Direct State Equity* – Refers to the subscription by the implementing agency of shares of  
6 stock or other securities convertible to shares of stock of the special purpose vehicle or  
7 single-purpose project company, whether such subscription will be paid by money or  
8 assets.

9  
10 *Direct State Guarantee* – Refers to an agreement whereby the implementing agency  
11 guarantees to assume responsibility for the repayment of debt directly incurred by the PSP  
12 in implementing the project in case of a loan default.

13  
14 *Direct State Subsidy* – Refers to an agreement whereby the implementing agency shall: (a)  
15 defray, pay or shoulder a portion of the P4 project cost or the expenses and costs in  
16 operating and maintaining the project; (b) condone or postpone any payments due from  
17 the PSP; (c) contribute any property or assets to the project; (d) waive or grant special  
18 rates on real property taxes on the project during the term of the contractual arrangement;  
19 and/ or (e) waive charges or fees relative to the business permits or licenses that are to be  
20 obtained for the construction of the project, all without receiving payment or value from  
21 the PSP or operator for such payment, contribution or support.

22  
23 *Franchise, License or Permit* – refers to the right or privilege affected with public interest  
24 which is conferred upon a PSP, under such terms and conditions as the implementing  
25 agency and/or regulator, license or permit authority may impose, in the interest of public  
26 welfare, security and safety.

27  
28 *Hybrid P4* – refers to a combination of government procurement under Republic Act No.  
29 9184 and P4, either simultaneously or sequentially undertaken or implemented with each  
30 other.

31  
32 *Infrastructure and/or Development Facility* – Projects normally financed and operated, or  
33 regulated by the implementing agency but which will now be wholly or partly financed,  
34 constructed and operated by the PSP; projects that will advance and promote the general  
35 welfare; and other infrastructure and development projects as may be authorized by the  
36 implementing agency.

37  
38 These projects include but are not limited to, energy and power, renewable energy, waste-  
39 to-energy, roads, bridges, causeways, waterways, highways, ports, wharfs, terminals,  
40 airports, community airports, canals, dams, desilting, dredging, mining and exploration,  
41 hydropower projects, water supply and distribution, sewerage, irrigation, drainage, water  
42 conservation such as impoundment areas and rainwater harvesting, telecommunications,  
43 railroad and railways, short-haul transit services such as monorail, guided bus, bus services  
44 and trams, intermodal and multi-modal transit systems, transport systems, traffic control  
45 and management, parking facilities, reclamation projects, platform settlements, industrial  
46 estates or townships, central business and industrial park development, hotels and resorts,



1 socialized housing, non-conventional low-cost housing, settlement/ resettlement and  
2 relocation facilities, residential subdivisions, parks and open space development/  
3 redevelopment, pocket parks, public art, libraries, heritage conservation, government  
4 buildings, sustainable/ green public buildings, sports facilities, wellness establishments,  
5 tourism such eco-tourism, wellness tourism and agri/agro-tourism, public markets,  
6 commercial buildings, slaughterhouses, storage buildings, warehouses, cold storage, solid  
7 waste management, sanitary landfills, meeting and convention centers, information  
8 technology networks and database infrastructure, education-related, classrooms, health  
9 facilities, hospitals, social services-related, prisons, agriculture-related, post-harvest  
10 facilities, environmental management and protection, climate change adaption, disaster  
11 risk reduction, among other developmental projects. The projects may be undertaken or  
12 implemented singly or with other related components.

13  
14 *Implementing Agency* – refers to the department, bureau, office, instrumentality,  
15 commission, or authority of the national government, including government-owned or  
16 controlled corporations (GOCCs), state universities and colleges (SUCs), government  
17 financial institutions (GFIs), government instrumentalities with corporate powers (GICPs),  
18 government corporate entities (GCEs), and other government corporate entities (OGCEs) as  
19 defined in Republic Act No. 10149, or local government units (LGUs), which may undertake  
20 P4 programs and projects in accordance with this Act. P4 can have several implementing  
21 agencies as co-grantors and/ or beneficiaries of P4.

22  
23 *Negotiated Projects* – Refer to instances where the desired project is the result of an  
24 unsolicited proposal from a PSP or, where the implementing agency has failed to identify  
25 an eligible private sector partner for a desired P4 activity when there is only one qualified  
26 bidder after subjecting the same to a competitive selection or bidding.

27  
28 *Private Sector Proponent (PSP)* – Refers to the private sector entity which shall have the  
29 contractual responsibility for the infrastructure or development project and which shall  
30 have an adequate track record in the concerned industry, as well as technical capability and  
31 financial base consisting of equity and firm commitments from reputable financial  
32 institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost  
33 of the project to implement the said project.

34  
35 *Project Study (FS)* – A study, which may be a feasibility study or a pre-feasibility study,  
36 prepared by the implementing agency in a competitive selection or a PSP when submitting  
37 an unsolicited proposal, containing a needs analysis, affordability assessment, value for  
38 money assessment, preliminary risk assessment, stakeholder assessment, human resource  
39 assessment, bankability assessment, legal viability assessment, P4 mode selection, market  
40 testing if relevant, indicative transaction implementation plan, and draft P4 contract.

41  
42 *Public-Private Partnership for the People (P4)* – At the policy level, a P4 is a developmental,  
43 innovative, change and partnership strategy aimed at promoting the general welfare,  
44 inclusive growth and better quality of life of Filipinos.

1 P4 is a form of legally enforceable contract between the implementing agency and a PSP,  
2 requiring new investments from the PSP and transferring key risks to the PSP in which  
3 payments are made in exchange for performance, for the purpose of delivering a service  
4 provided or intended to be provided by the implementing agency. P4 shall also include  
5 dispositions of an asset, facility, project owned, or entity created by the implementing  
6 agency to a PSP; procurement of a service; assumption by a PSP of a proprietary function of  
7 the implementing agency; grant of a concession or franchise to a PSP by the implementing  
8 agency; or usage by the PSP of public property owned or possessed by the implementing  
9 agency.

10  
11  
12 *P4 Contract* – Refers to the duly executed agreement between an implementing agency and  
13 PSP over an awarded P4 program or project.

14  
15 *P4 Program or Project* – Refers to an infrastructure or development facility undertaken  
16 pursuant to this Act.

17  
18 *P4 Regulatory Authority* – refers to the entity authorized, as detailed in Section 11 hereof, to  
19 approve P4 programs or projects proposed pursuant to this Act.

20  
21 *Reasonable Rate of Return (RROR)* – Refers to the rate of return that a PSP shall be entitled  
22 to, as determined by the P4 Regulatory Authority, taking into account, among others, the  
23 prevailing cost of capital (equity and borrowings) in the domestic and international  
24 markets, risks being assumed by the PSP and the level of undertakings and contributions  
25 extended by the implementing agency for the project.

26  
27 *Unsolicited Proposal* – Refers to project proposals submitted by a PSP to the implementing  
28 agency to undertake an infrastructure or development facility or project, whether priority  
29 or not, without a formal solicitation issued by the implementing agency.

30  
31 *Value for Money (VfM)* – Refers to the concept that over the duration of a P4 program or  
32 project, the implementing agency's total expenditures (i.e., its payments to the private  
33 sector), adjusted for the risks that have been transferred to the private sector, will be less,  
34 on a Net Present Value (NPV) basis, than if the implementing agency will perform the  
35 services itself. VfM considers monetary and non-monetary factors such as: (i) risk transfer;  
36 (ii) reduced whole life costs; (iii) speed of implementation; and (iv) quality and reliability  
37 of service.

38  
39 *Viability Gap Funding (VGF)* – Refers to an explicit subsidy that is performance-driven (i.e.,  
40 based on private party achieving measurable outputs) and targeted to socio-economically  
41 disadvantaged users or groups of users; or any financial support in the form of grants or  
42 assistance, one time or deferred, to infrastructure or development facility undertaken  
43 through P4s with a view to make them commercially viable.



1 Section 4. *P4 Center*. – (a) There is hereby created an agency to be known as the Public-  
2 Private Sectors Partnership Center (P4 Center), attached to the National Economic and  
3 Development Authority (NEDA). The P4 Center shall be headed by an Executive Director  
4 with the rank equivalent to an Undersecretary and shall be appointed by, and co-terminous  
5 with, the President of the Philippines who appointed him/her.

6  
7 (b) The PPP Center, created under Executive Order No. 8, s. of 2010, shall henceforth  
8 be known as the P4 Center.

9  
10  
11 Section 5. *Purposes of the P4 Center*. – The P4 Center is hereby created for the following  
12 purposes:

13  
14 To facilitate the coordination and monitoring of P4 programs and projects;  
15 To manage and administer the P4 Project Development and Monitoring Facility Fund (P4-  
16 PDMF Fund) created pursuant to this Act; and,  
17 To perform such other functions as may be necessary to effectively and efficiently carry out  
18 its purposes and functions.

19  
20  
21 Section 6. *Powers and Functions of the P4 Center*. – The P4 Center shall cover all P4  
22 programs and projects and shall have the following powers and functions:

23  
24 Render assistance to implementing agencies in identifying, developing, prioritizing and  
25 maintaining P4 programs and projects;  
26 Conduct P4 programs and project facilitations to aid implementing agencies in addressing  
27 impediments or delays in the implementation of P4 programs and projects;  
28 Provide advisory services, technical assistance, trainings and capacity development to  
29 implementing agencies in P4 project preparation and development;  
30 Manage and administer the P4-PDMF Fund;  
31 Serve as the Secretariat for the P4 PDMF Fund Committee;  
32 Assist implementing agencies in setting procurement and implementation timelines and  
33 guidelines for approved P4 programs and projects;  
34 Recommend plans and policies related to P4 programs and projects in consultation with  
35 appropriate oversight committees, implementing agencies and the private sectors;  
36 Monitor, facilitate and evaluate the implementation of the P4 programs and projects of  
37 formulated by implementing agencies;  
38 Collect, receive fees and recover costs expended in the exercise of its powers and functions;  
39 Establish and manage a central database system of P4 programs and projects;  
40 Recommend improvements to timelines in processing P4 programs and project proposals,  
41 and monitor compliance of all implementing agencies;  
42 Prepare reports on the implementation of the P4 programs and projects of the government  
43 for submission to the President at the end of each year;  
44 Serve as the central repository of all executed P4 contracts and any subsequent  
45 amendment or supplement thereto, including compromise and/or settlement agreements,  
46 entered into by the implementing agency;

1 Shall act as the Secretariat of the P4 Governing Board; and,  
2 Perform such other functions which may be critical in expediting and effectively  
3 implementing the P4 programs and projects of the Government or necessary to achieve the  
4 objectives and purposes of this Act.

5  
6  
7 Section 7. *P4 Governing Board.* – (a) The P4 Center shall be governed by the P4 Governing  
8 Board which shall serve as the overall policy-making body for all P4 programs and projects  
9 and related matters, including the P4 PDMF Fund.

10  
11 (b) The P4 Governing Board shall be composed of the following:

Chairperson :	Secretary of Socio-Economic Planning
Vice-Chairperson :	Secretary of Finance
Members :	Secretary of Budget and Management
	Secretary of Justice
	Secretary of Interior and Local Government
	Secretary of Trade and Industry
	Executive Secretary
	Executive Director of the P4 Center
	Private Sector Co-Chairman of the National
	Competitiveness Council

12  
13  
14 The principal members of the P4 Governing Board may designate their respective  
15 alternates who shall be the officials next in rank to them. The acts of the alternates shall be  
16 considered as the act of the principal.

17  
18 The Chairperson and five (5) other members of the P4 Governing Board shall constitute a  
19 quorum and a majority vote of the members present shall be necessary for the adoption of  
20 any issuance, order, resolution, decision or other act of the Board in the exercise of its  
21 functions.

22  
23 The P4 Governing Board shall, within thirty (30) days from its date of receipt, act upon any  
24 matter referred to it for action or consideration.

25  
26  
27 Section 8. *Duties and Responsibilities of the Executive Director.* – The Executive Director  
28 shall have the following duties and responsibilities:

29  
30 To act as Chief Executive of the P4 Center;  
31 To execute, administer and implement the policies and measures approved by the P4  
32 Governing Board;  
33 To direct and supervise the day-to-day operations and administration of the P4 Center;  
34 To represent the P4 Center in all dealings with offices, agencies and instrumentalities of the  
35 government and with all persons and other entities, public or private, domestic or foreign;



1 To prepare the agenda for the meetings of the P4 Governing Board, and to submit for the  
2 consideration of the P4 Governing Board such policies and measures as s/he believes is  
3 necessary to carry out the purposes and objectives of this Act; and,  
4 To exercise such other powers and perform such other duties provided in the by-laws and  
5 as may be vested in him by the P4 Governing Board.

6  
7  
8 Section 9. *P4 Project Development and Monitoring Facility Fund.* – (a) There is hereby  
9 created a special and revolving fund to be known as the P4 Project Development and  
10 Monitoring Facility (P4 PDMF Fund) which shall be managed by the P4 Center. The funds  
11 in the existing PDMF Fund referred to in Executive Order No. 8, Series of 2010, as amended,  
12 shall be transferred to the P4 PDMF Fund under this Act.

13  
14 (b) The P4 PDMF Fund shall be used for the procurement of advisory and support  
15 services related to the preparation, structuring, probity management, procurement,  
16 financial close, and monitoring of implementation of P4 programs and projects.

17  
18  
19 Section 9. *P4 PDMF Fund Committee.* – (a) A P4 PDMF Fund Committee is hereby created  
20 which shall approve applications for P4 PDMF Fund support submitted by implementing  
21 agencies, GOCCs or LGUs.

22  
23 (b) The P4 PDMF Fund Committee shall be composed of representatives from  
24 the National Economic and Development Authority (NEDA), Department of Finance  
25 (DOF), Department of Budget and Management (DBM) and the P4 Center.

26  
27 (c) The P4 PDMF Fund Committee shall formulate, prescribe and recommend  
28 policies, procedures and guidelines for the use of the P4 PDMF Fund and recovery of costs  
29 charged thereto, to the P4 Governing Board.

30  
31  
32 Section 10. *Authority of Implementing Agencies.* – Implementing agencies are hereby  
33 authorized to undertake P4 programs and projects with any PSP provided, however, that  
34 the same must be in accordance with their respective charters and this Act.

35  
36 Section 11. *Approval of P4 Programs or Projects.* – P4 programs or projects shall be subject  
37 to the approval of the following P4 Regulatory Authorities:

38  
39 P4 programs or projects, the total cost of which exceed ONE BILLION PESOS (Php  
40 1,000,000,000.00), shall be approved by the NEDA – Investment Coordination Committee  
41 (NEDA – ICC); and,

42 P4 programs or projects, the total cost of which does not exceed ONE BILLION PESOS (Php  
43 1,000,000,000.00), shall be approved by the implementing agency's supervising agency,  
44 governing board or local legislative council, as the case may be.

1 Section 12. *Priority P4 Programs or Projects.* – Implementing agencies shall, within ninety  
2 (90) days from the effectivity of this Act and every three (3) years thereafter, identify  
3 priority P4 programs or projects and submit the same to the P4 Center for information,  
4 coordination, evaluation and monitoring purposes. Identified priority P4 programs or  
5 projects should be consistent with the Philippine Development Plan.

6  
7 Section 13. *Unsolicited Proposals.* – (a) Unsolicited proposals may be submitted for any  
8 project, priority or otherwise.

9  
10 The implementing agency may either reject the unsolicited proposal, use the same as the  
11 basis of a public bidding pursuant to Section 14 hereof, or accept the unsolicited proposal  
12 on a negotiated basis.

13  
14 In accepting an unsolicited proposal on a negotiated basis, the implementing agency shall  
15 subject the unsolicited proposal to a competitive challenge or Swiss challenge; provided,  
16 however, that the unsolicited proposal meets the following conditions:

17  
18 The P4 program or project does not receive VGF or any other form of payment, direct state  
19 equity, direct state subsidy, or direct state guarantee from any government agency,  
20 instrumentality, or unit.

21  
22 The implementing agency shall publish for three (3) consecutive weeks in a newspaper of  
23 general circulation, as well as in the website of the P4 Center and the implementing agency,  
24 an invitation for the submission of comparative proposals.

25  
26 If no comparative proposal is received within six (6) months from the date of last  
27 publication in a newspaper of general circulation, and provided that the unsolicited  
28 proposal is compliant and in accordance with all applicable laws, rules and regulations  
29 pertinent to the proposed infrastructure or development facility, the implementing agency  
30 may accept the unsolicited proposal and refer the same to the proper P4 Regulatory  
31 Authority for approval.

32  
33 If the implementing agency receives a comparative proposal within the period referred  
34 above that is more advantageous to the government, the PSP who submitted the  
35 unsolicited proposal shall have the right to match any superior offers given by a  
36 comparative PSP.

37  
38  
39 Section 14. *Competitive Selection or Bidding or Open Competition of Priority P4 Programs or*  
40 *Projects.* – (a) Upon approval of the P4 program or project by the appropriate P4  
41 Regulatory Authority, the implementing agency shall immediately cause the publication of  
42 an *Invitation to Bid*, once every week for three (3) consecutive weeks, in at least two (2)  
43 newspapers of general circulation and in at least one (1) local newspaper which is  
44 circulated in the region, province, city or municipality where the P4 program or project will  
45 be implemented, inviting all prospective project proponents to participate in a transparent



1 and competitive public bidding. Said invitation shall also be posted continuously in the  
2 websites of the implementing agency and the P4 Center.

3  
4 The public bidding shall be conducted under a two-stage-two-envelope system, the  
5 procedure and details of which shall be outline in the implementing rules and regulations  
6 (IRR) of this Act.

7  
8 The P4 program or project, and its resulting contract, shall be awarded to the bidder who  
9 has passed the pre-qualification stage for having satisfied the minimum financial,  
10 organizational and legal standards as set forth in the IRR of this Act, has passed the  
11 technical proposal evaluation, and has submitted the most favorable financial bid based on  
12 the parameters defined in the bid documents.

13  
14 In case of a sole complying and/or responsive bidder, the implementing agency may award  
15 the P4 program or project, and its resulting contract, to that bidder upon its compliance  
16 with the post-award requirements as set forth in the IRR of this Act.

17  
18  
19 Section 15. *Direct Negotiations.* – Direct negotiation shall be resorted to when there is only  
20 one complying bidder left as defined hereunder:

21  
22 If, after advertisement, only one contractor applies for prequalification and it meets the  
23 prequalification requirements, after which it is required to submit a bid/proposal which is  
24 subsequently found by the implementing agency to be complying.

25  
26 If, after advertisement, more than one contractor applied for prequalification but only one  
27 meets the prequalification requirements, after which it submits bid/proposal which is  
28 found by the implementing agency to be complying.

29  
30 If, after prequalification of more than one contractor, only one submits a bid which is found  
31 by the implementing agency to be complying.

32  
33 If, after prequalification, more than one contractor submit bids but only one is found by the  
34 implementing agency to be complying: Provided, That any of the disqualified prospective  
35 bidder may appeal the decision of the implementing agency's Pre-qualification Bids and  
36 Awards Committee within fifteen (15) working days to the head of the agency, in case of P4  
37 programs or projects by government agencies or GOCCs; to the Department of the Interior  
38 and Local Government (DILG), in case of P4 programs or projects by LGUs from the date the  
39 disqualification was made known to the disqualified bidder: Provided, furthermore, That  
40 the implementing agency concerned or DILG should act on the appeal within forty-five (45)  
41 working days from receipt thereof.

42  
43  
44 Section 16. *Grant of Administrative Franchise, License or Permit.* – (a) If the implementing  
45 agency is likewise the regulator, licensing or permit authority concerned, it shall, within  
46 thirty (30) days from the execution of a P4 Contract, issue or grant in favour of the PSP the

1 necessary administrative franchise, license or permit required and necessary for the  
2 implementation of the P4 program or project. If the P4 contract contains a concession  
3 provision or if a concession is contained in a separate agreement, said contract or  
4 agreement constitutes the grant of administrative franchise, license or permit.

5  
6 If the regulator, licensing or permit authority is a government agency, instrumentality or  
7 subdivision other than the implementing agency, the latter shall, within thirty (30) days  
8 from the execution of the P4 Contract, endorse the P4 program or project to the proper  
9 regulator, licensing or permit authority for the issuance and/or grant of requisite  
10 administrative franchise, license or permit.

11  
12 (c) The regulator, license or permit authority shall, provided that the PSP and/or P4  
13 program or project is in compliance with all the requirements of the regulator, license or  
14 permit authority, accept and approve the application for administrative franchise, license  
15 or permit within sixty (60) days from receipt of all required and necessary documents. The  
16 failure of the regulator, license or permit authority to act on a proper and complete  
17 application upon the lapse of the aforementioned period shall be deemed as approval  
18 thereof.

19  
20  
21 Section 16. *Expansion or Extension of an Existing Infrastructure or Development Facility. P4*  
22 *Contract Amendment.* – Subject to conditions specified in the IRR of this Act, and upon prior  
23 approval by the appropriate P4 Regulatory Authority, the PSP of an existing infrastructure  
24 or development facility may be expand or extend the same even without further bidding;  
25 Provided, however, that the cost of the expansion or extension shall not exceed twenty-five  
26 percent (25%) of the price-adjusted original project cost; and, provided, further, that any  
27 subsequent expansion or extension shall no longer be allowed.

28  
29 Section 17. *Contract Amendment and Termination.* – (a) A PPP contract may be modified or  
30 amended, in form or in substance, after the contract has been signed by the parties,  
31 provided, that the terms of reference or tender documents of the competitive selection or  
32 challenge, including the draft P4 contract, contains the right to amend.

33  
34 (b) In the event that a P4 Contract is revoked, cancelled or terminated by the  
35 implementing agency through no fault of the PSP or by mutual agreement, the  
36 implementing agency shall compensate the PSP for actual expenses incurred in the P4  
37 program or project plus a reasonable rate of return thereon not exceeding that stated in the  
38 contract as of the date of such revocation, cancellation or termination: Provided, That the  
39 interest of the implementing agency in these instances shall be duly insured with the  
40 Government Service Insurance System (GSIS) or any other insurance entity duly accredited  
41 by the Office of the Insurance Commissioner: Provided, finally, That the cost of the  
42 insurance coverage shall be included in the terms and conditions of the bidding referred to  
43 above.

44  
45 (c) In the event that the implementing agency defaults on certain major obligations in  
46 the contract and such failure is not remediable or if remediable shall remain unremedied



1 for an unreasonable length of time, the PSP may, by prior notice, terminate the contract.  
2 The PSP shall be reasonably compensated by the implementing agency of equivalent or  
3 proportionate contract cost as defined in the contract.

4  
5 (d) Only the courts can declare a P4 contract and award illegal and unlawful.  
6  
7

8 Section 18. *Prohibition on the Issuance of Temporary Restraining Orders or Injunctions.* – No  
9 court, except the Supreme Court, shall issue any temporary restraining order, preliminary  
10 injunction or preliminary mandatory injunction against the implementing agency, officials  
11 or any person or entity, whether public or private acting under the implementing agency's  
12 direction, to restrain, prohibit or compel the following acts:  
13

14 Acquisition, clearance and development of the right-of-way and/or site or location of any  
15 P4 program or project;  
16

17 Bidding or awarding of P4 program or project and P4 Contract;  
18

19 Commencement, execution, implementation, operation of any P4 program or project and  
20 P4 Contract;  
21

22 Termination or rescission of any P4 program or project and P4 Contract; and,  
23

24 The undertaking or authorization of any other lawful activity necessary for P4 program or  
25 project and P4 Contract.  
26

27 This prohibition shall apply in all cases, disputes or controversies instituted by a private  
28 party, including but not limited to cases filed by bidders or those claiming to have rights  
29 through such bidders involving such P4 program or project and P4 Contract. This  
30 prohibition shall not apply when the matter is of extreme urgency involving a  
31 constitutional issue, such that unless a temporary restraining order is issued, grave  
32 injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be  
33 fixed by the Supreme Court, which bond shall accrue in favor of the government if the  
34 Supreme Court should finally decide that the applicant was not entitled to the relief sought.  
35

36 The temporary restraining order, preliminary injunction or preliminary mandatory  
37 injunction issued by the Supreme Court, however, shall be effective only for a period not  
38 exceeding six (6) months  
39  
40

41 Section 19. *P4 Program or Project Supervision.* – Every P4 program or project undertaken  
42 under the provisions of this Act shall be in accordance with the plans, specifications,  
43 standards, and costs approved by the concerned implementing agency and shall be under  
44 the supervision of the said implementing agency.  
45

1 Section 20. *Investment Incentives.* – Among other incentives, P4 programs and projects in  
2 excess of ONE BILLION PESOS (Php1,000,000,000) shall be entitled to incentives as  
3 provided by the Omnibus Investment Code, upon prior endorsement by the P4 Center and  
4 registration by the PSP with the Board of Investments.

5  
6 Section 21. *Exemption from Payment of Transfer Taxes.* – The transfer of ownership of  
7 infrastructure and development facility from the PSP to the implementing agency shall be  
8 exempt from capital gains tax, documentary stamp tax and all taxes and fees, whether from  
9 national or local, related to the transfer thereof.

10  
11 Section 22. *Recovery of Investment.* – The PSP may, pursuant to the terms and conditions set  
12 forth in the P4 Contract, be allowed to collect tolls, fees, rentals, or charges, engage in  
13 commercial development, receive VGF, and receive direct government payments, among  
14 others, to recover its investment.

15  
16 Section 23. *Implementing Rules and Regulations; Ordinances.* – (a) The P4 Governing Board  
17 shall constitute the IRR Committee. Within sixty (60) days from the effectivity of this Act,  
18 the IRR Committee, after public hearing and publication as required by law, the rules and  
19 regulations to implement the provisions of this Act. Notwithstanding the non-issuance of  
20 the IRR, this Act shall become operative.

21  
22 (b) Local government units may enact their own P4 ordinances not inconsistent  
23 with this Act. They may provide for other P4 contractual variants other than those listed  
24 under this Act.

25  
26  
27 Section 24. *Transitory Provisions.* – All unexpended funds for the calendar year, properties,  
28 equipment, contracts and records of the P4 Center are hereby retained. The amount  
29 necessary to carry out the organizational changes of P4 Center, if deemed necessary by the  
30 P4 Governing Board, shall be incorporated in its budget appropriations proposals to  
31 Congress for the succeeding years.

32  
33 All officials and employees of the P4 Center shall be retained and shall not suffer any loss of  
34 seniority or rank or decrease in emoluments.

35  
36  
37 Section 25. *Repealing Clause.* – (a) All laws, executive orders, presidential decrees, rules,  
38 regulations, or parts thereof that are inconsistent with the provisions of this Act are hereby  
39 repealed or modified accordingly.

40  
41 (b) This Act shall apply prospectively. All P4 contracts, awards and procedures,  
42 whether completed or commenced under relevant rules, guidelines, and ordinances are  
43 deemed recognized and shall continue, and shall not be impaired.



1 Section 26. *Separability Clause.* – If any provision of this Act is held invalid, the other  
2 provisions not affected thereby shall continue in operation.

3  
4 Section 27. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its  
5 publication in at least two (2) newspapers of general circulation.

6  
7 Approved,