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SENATE

S.B. No. 1159

RECEIVED BY: 

Introduced by Senator SONNY ANGARA

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

EXPLANATORY NOTE

With the Duterte administration's thrust of accelerating infrastructure spending through the "Build, Build, Build" Program, it is appropriate to refile this bill to support the implementation of various infrastructure projects throughout the country.

Government has traditionally been in charge of providing and financing infrastructure development throughout the country. However, investment requirements have exceeded the capacities of the government, prompting the public sector to enable private participation in infrastructure development and include utilities, transportation, property development, and information technology, through contractual arrangements such as build-operate-transfer (BOT).

Reforms to the BOT framework are necessary to better address the needs and qualms of investors while ensuring the best value-for-money outcomes for the government, as well as the best interest of the user community. After over two decades since the passage of the BOT Law, the concept of BOT has evolved into what we now know as public-private partnerships (PPP). Moreover, through years of experience in project implementation, the government has broadened and deepened its understanding of structuring PPP deals and managing PPP contracts. For the country to usher in a "Golden Age of Infrastructure" and maximize economic gains,

the private sector must be encouraged to make investments through a modernized and enhanced PPP law.

In line with the Philippine Development Plan 2017-2022 and the thrust and priorities of the current administration, this bill seeks to enhance and reinforce the PPP Program with the goal of accelerating infrastructure development. Specifically, it seeks to create an enabling environment for PPPs where rules are fair, clear, and equally applied to all. Pertinent government regulations will also be rationalized and benchmarked against international standards and best practices.

Under the measure, the coverage of PPPs will be expanded to include joint ventures, and operation and maintenance contracts. It also aims to protect public interest by ensuring fair and reasonable pricing and timely delivery of quality infrastructure, goods and services, as well as by requiring full public disclosure of all PPP transactions.

This bill shall also empower Local Government Units (LGUs) by providing them the power to approve local PPP projects and requiring them to only elevate the projects for Investment Coordination Committee (ICC) approval upon reaching threshold amounts or when needing any national government participation.

With the framework proposed under this bill, we can attract more PPPs to help the government speed up the delivery of public infrastructure and improve the related services to boost the growth of the Philippine economy.

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




SONNY ANGARA

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

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

1 SECTION. 1. *Short Title.*—This Act shall be known as the “Public-Private
2 Partnership (PPP) Act” of the Philippines.

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

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

13 (a) *Approving Body* – refers to an entity authorized to approve PPP
14 projects proposed under this Act and its IRR, in accordance with
15 Section 6 of this Act.

16 (b) *Construction* – refers to new construction, rehabilitation,
17 improvement, expansion, alteration, installation, and related works and

1 activities in connection with an infrastructure facility, including the
2 necessary supply of equipment, materials, labor and services and related
3 items.

4 *(c) Contractor* – refers to any person, who may or may not be the project
5 proponent, and who shall undertake the actual construction of an
6 infrastructure facility.

7 *(d) Cooperation Period* – refers to the period of operation of an
8 infrastructure facility: Provided, That in the case of public utilities
9 requiring a franchise, such period shall not exceed the maximum
10 period prescribed by existing laws.

11 *(e) GOCC* – refers to a government-owned or -controlled corporation, a
12 government instrumentality with corporate powers, or a government
13 corporate entity.

14 *(f) ICC* – refers to the Investment Coordination Committee of the NEDA
15 Board.

16 *(g) Implementing Agency* – refers to a department, bureau, office,
17 instrumentality, commission, authority, GOCC, state university or college,
18 or government financial institution of the National Government, or an
19 LGU.

20 *(h) Infrastructure Facility* – refers to a facility that has been determined by
21 the Government to be necessary for public use or public service or for the
22 discharge of governmental or proprietary functions, including but not
23 limited to, power plants, highways, ports, airports, canals, dams,
24 hydropower projects, water supply, irrigation, telecommunications,
25 railroads and railways, transport systems, land reclamation projects,
26 industrial estates or townships, housing, government buildings, tourism
27 projects, markets, slaughterhouses, warehouses, solid waste
28 management, information technology systems and infrastructure,
29 education and health facilities, sewerage, drainage, dredging, climate
30 change mitigation and adaptation measures, and other similar facility.

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

32 *(j) LGU* – refers to a local government unit.

1 *(k)Local PPP Project* – refers to a PPP Project that will be undertaken by
2 an LGU.

3 *(l)National PPP Project* – refers to a PPP Project that will be undertaken
4 by an Implementing Agency of the National Government.

5 *(m)NEDA* – refers to the National Economic and Development Authority.
6

7 *(n)PBAC* – refers to the Prequalification Bids and Awards Committee of
8 the Implementing Agency.

9 *(o)PDMF* – refers to the Project Development and Monitoring Facility
10 created under Section 7 of this Act.

11 *(p)PPP* – refers to a public-private partnership governed by a contractual
12 arrangement between the implementing agency and the project
13 proponent for the financing, design, construction, operation, and
14 maintenance, or any combination thereof, of an infrastructure facility
15 under this Act.

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

20 *(r) PPP Contract* – refers to the contract between the Implementing
21 Agency and the Project Proponent for the financing, Construction,
22 operation, or maintenance of an Infrastructure Facility under a PPP
23 Project.

24 *(s)PPP Project* – refers to a project undertaken under this Act.

25 *(t)Person* – refers to an individual, sole proprietorship, partnership,
26 corporation or any other form of organization, whether domestic or
27 foreign.

28 *(u)Project Cost* – refers to total capital cost, financing and other expenses
29 for the design, construction, operation, and maintenance of an
30 infrastructure facility.

31 *(v)Project Proponent* – refers to any private person who shall undertake a
32 PPP project.

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

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

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

15 Sec. 5. *Variations of Contractual Arrangements.* – PPP Projects may be
16 undertaken through any of the following contractual arrangements and such other
17 variations as may be described in the IRR and approved by the President of the
18 Philippines:

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

29 (ii) *Build-Lease-and-Transfer* – refers to a contractual arrangement
30 whereby the Project Proponent undertakes the financing and
31 Construction of an Infrastructure Facility, upon its completion leases it

1 to the Implementing Agency for the duration of the Cooperation
2 Period, and after the Cooperation Period automatically transfers
3 ownership to the Implementing Agency.

4 *(iii)Build-Own-and-Operate* – refers to a contractual arrangement
5 whereby the Project Proponent undertakes the financing, Construction,
6 ownership, operation, and maintenance of an Infrastructure Facility. The
7 Project Proponent is allowed to collect tolls, fees, rentals or other
8 charges from users of the Infrastructure Facility to recover its total
9 investment and operating and maintenance costs plus a return not
10 exceeding the Approved Rate of Return.

11 *(iv)Build-Operate-and-Transfer* – refers to a contractual arrangement
12 whereby the Project Proponent undertakes the financing and
13 Construction of an Infrastructure Facility, operates and maintains it
14 during the Cooperation Period, and transfers ownership to the
15 Implementing Agency at the end of the Cooperation Period.

16 *(v)Build-Transfer-and-Operate* – refers to a contractual arrangement
17 whereby the Project Proponent undertakes the financing and
18 Construction of an Infrastructure Facility, transfers ownership to the
19 Implementing Agency once it is commissioned satisfactorily, and
20 operates the Infrastructure Facility for the duration of the Cooperation
21 Period.

22 *(vi)Contract-Add-and-Operate* – refers to a contractual arrangement
23 whereby the Project Proponent undertakes the financing and
24 Construction of an addition to an Infrastructure Facility that it is leasing
25 from the Implementing Agency and operates and maintains the
26 expanded Infrastructure Facility for the duration of the Cooperation
27 Period. There may, or may not be, a transfer arrangement in regard to
28 the Infrastructure Facility.

29 *(vii)Develop-Operate-and-Transfer* – refers to a contractual arrangement
30 whereby the Project Proponent undertakes the financing, Construction,
31 operation, and maintenance of an Infrastructure Facility as well as its

1 adjoining property in order to enjoy some of the benefits the
2 investment creates such as higher property or rent values.

3 *(viii) Joint Venture* – refers to a contractual arrangement whereby the
4 Project Proponent and the Implementing Agency, contribute money,
5 services, assets, or a combination of any or all of the foregoing, to
6 undertake a PPP Project, with the intention to share profits, risks and
7 losses. Assets may include equipment, land, intellectual property or
8 anything of value.

9 *(ix) Operations and Maintenance Contract* – refers to a contractual
10 arrangement whereby the Project Proponent undertakes the operation
11 and maintenance of an Infrastructure Facility owned by the
12 Implementing Agency, including the acquisition or provision and
13 upgrading of equipment, systems and other items related to operation
14 and maintenance. The Project Proponent shall be compensated in the
15 form of a performance-based management or service fee during the
16 Cooperation Period.

17 *(x) Rehabilitate-Operate-and-Transfer* – refers to a contractual
18 arrangement whereby the Project Proponent undertakes the financing,
19 refurbishment, improvement, operation, and maintenance of an
20 existing Infrastructure Facility for the duration of the Cooperation
21 Period, and transfers ownership of the Infrastructure Facility to the
22 Implementing Agency at the end of the Cooperation Period.

23 *Sec. 6. Identification of PPP Projects.* – Implementing agencies that are
24 required under existing laws to identify priority development projects shall ensure
25 that such projects are consistent with the Philippine Development Plan or its
26 equivalent at the local level and that such projects include PPP Projects. The
27 implementing agencies shall submit their list of PPP Projects or any update thereto
28 to the PPP Center for information.

29 *Sec. 7. Approval of PPP Projects.* – The approval of PPP projects under this
30 Act and its IRR shall be in accordance with the following:

1 A. *National PPP Projects* – The Approving Body for a National PPP Project
2 shall be the ICC, the NEDA Board, or both, depending on the project cost as
3 prescribed in the IRR: *Provided*, That (i) if the implementing agency is a GOCC, the
4 GOCC shall obtain the approval of the head of the Department to which the GOCC is
5 attached; and (ii) if the Implementing Agency is a Department, the consent of the
6 GOCC attached to such Department and affected by the PPP Project is not required.
7 If a National PPP Project will have an impact on a region, the implementing agency
8 shall provide the concerned Regional Development Council with a copy of the project
9 proposal prior to submitting such project proposal to the Approving Body for
10 approval. The Regional Development Council may, if it so desires, endorse the
11 project to the Approving Body: *Provided*, That the endorsement of the Regional
12 Development Council shall not be necessary for approval of the project unless
13 required by the Approving Body.

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

17 Sec. 8. *Project Development and Monitoring Facility (PDMF)*. – A special fund
18 is hereby created to be known as the PDMF, which shall be used for the
19 procurement of advisory and support services related to the preparation, structuring,
20 probity management, procurement, financial close, and monitoring of
21 implementation of PPP projects. The PDMF Fund referred to under Executive Order
22 No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, shall
23 be transferred to the PDMF under this Act. The PDMF may be funded through and
24 such amount as may be needed and included in the General Appropriations Act,
25 Official Development Assistance or other sources. The management and use of the
26 PDMF shall be in accordance with the following:

27 A. *Management*. – The PDMF shall be managed and administered by the
28 PPP Center as a revolving fund; thus, in addition to the amounts appropriated
29 herein, and in order to sustain the PDMF, the PPP Center may collect and receive
30 fees and recover costs expended through PDMF in accordance with the guidelines
31 that shall be approved by the PPP Governing Board. Such amount shall be retained
32 and authorized to be used by the PPP Center for the purposes indicated herein.

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

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

15 Sec. 9. *Public Bidding of Projects.* – The public bidding of projects shall be in
16 accordance with the following:

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

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

31 C. Award. – The contract shall be awarded to the bidder who has passed
32 the pre-qualification stage for having satisfied the minimum financial, organizational

1 and legal standards required by this Act and its IRR, has passed the technical
2 proposal evaluation, and has submitted the most favorable financial bid based on
3 the parameters defined in the bid documents.

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

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

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

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

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

22 E. Protest. – The following protest protocol shall be strictly followed in all
23 stages of the selection process: *Provided*, That no appeal shall stay the selection
24 process; *Provided, further*, That a PPP Contract may not be awarded until all appeals
25 have been resolved in accordance with this sub-section:

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

28 (b)The decision of the PBAC on the motion for reconsideration may be
29 further questioned by filing an appeal to the head of the implementing
30 agency concerned and paying a non-refundable appeal fee in an

1 amount equivalent to no less than ½ of 1% of the project cost within a
2 period prescribed in the IRR.

3 (c) If the head of the implementing agency in the immediately preceding
4 paragraph is not a Department Secretary, the decision of the head of
5 the implementing agency may be further questioned by filing an appeal
6 to the Secretary of the Department to which the implementing agency
7 is attached within a period prescribed in the IRR.

8 (d) The decision of the Department Secretary may be questioned by filing
9 an appeal to the Office of the President.

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

16 Sec. 10. *Unsolicited Proposals.* – Projects that are not in the list of priority
17 projects may be considered for unsolicited proposals. Priority projects shall not be
18 considered for unsolicited proposals, except when they involve a new concept or
19 technology.

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

22 (a) Reject the proposal;

23 (b) Use the unsolicited proposal as the basis for public bidding as provided
24 in Section 9 of this Act. Upon approval by the appropriate Approving
25 Body, the original proponent thereof shall be reimbursed of the cost
26 incurred in the preparation of the proposal, such as the cost of any
27 feasibility study undertaken: *Provided*, such reimbursement:

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

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

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

7 (a) Accept the unsolicited proposal on a negotiated basis: *Provided*, That the
8 following conditions are met:

9 (i) The project does not receive any viability gap funding or direct
10 payments from any government agency: *Provided*, That costs of right-
11 of-way, resettlement and real estate taxes shall not be considered as
12 part of the viability gap funding; and

13 (ii) Guided by the principles of transparency and competitiveness, the
14 implementing agency has invited by publication for three (3)
15 consecutive weeks in a newspaper of general circulation, as well as
16 websites of the PPP Center and of the implementing agency, the
17 submission of comparative proposals and no other proposal is received
18 for a period stated in the IRR of this Act, which period should not be
19 less than three (3) months nor more than six (6) months from the date
20 of last publication in a newspaper of general circulation. In the event
21 another proponent submits a superior counter-proposal within the
22 period referred to above and it is accepted by the appropriate
23 Approving Body, the original proponent shall have the right to outbid.

24 Sec. 11. *Private Legal Assistance.* – All the PBAC members and other public
25 officials providing services to the PBAC shall be authorized to engage the services of
26 private lawyers, or shall be provided with free legal assistance, where a civil,
27 criminal, or administrative action is filed against them by reason of the performance
28 of their official functions or duties, unless they are finally adjudged in such action or
29 proceeding to be liable for gross negligence or misconduct or grave abuse of
30 discretion.

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

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

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

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

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

29 The determination of whether or not such contracts shall be kept confidential,
30 as well as the terms and duration of confidentiality, shall be the responsibility of the
31 implementing agency concerned. The implementing agency shall transmit to the PPP

1 Center for records and monitoring purposes, a copy of the duly executed contract,
2 within thirty (30) working days from its complete execution.

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

9 (a) Bidding, rebidding or declaration of failure of bidding of PPP projects,
10 either national or local;

11 (b) Qualification or disqualification of bidders;

12 (c) Awarding of PPP contract;

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

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

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

18 (g) Commencement, execution, implementation, termination or rescission
19 of any PPP contract; and

20 (h) Undertaking or authorization of any other lawful activity necessary for
21 such PPP project or contract.

22 *Provided,* That effectiveness of the temporary restraining order, preliminary
23 injunction or preliminary mandatory injunction issued by the Supreme Court shall not
24 exceed six (6) months.

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

29 C. *Void.* Any temporary restraining order, preliminary injunction or preliminary
30 mandatory injunction issued in violation of this section is void and of no force and
31 effect.

1 D. *Application.* The foregoing prohibition shall apply in all disputes, cases, or
2 controversies instituted by any and all parties, including but not limited to cases filed
3 by bidders, implementing agencies or those claiming to have rights through such
4 bidders or implementing agencies involving PPP project or contract.

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

9 Sec. 17. *Regulatory Boards.* – No regulatory body shall be allowed to enter
10 into any PPP contract for an Infrastructure Facility whose operation will be regulated
11 by such regulatory body.

12 Sec. 18. *Project Supervision.* – Every PPP project undertaken under the
13 provisions of this Act and its IRR shall be in accordance with the designs, plans,
14 specifications, standards, and costs approved by the implementing agency and
15 appropriate Approving Body, and shall be under the supervision of the implementing
16 agency concerned.

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

21 Sec. 20. *Projects of National Significance.* –

22 A. *Incentives.* Upon certification and recommendation by the ICC, and prior
23 consultation with the Department of Interior and Local Government (DILG), the
24 President may classify certain projects, such as energy, toll road, mass transit,
25 water, sewerage and such other projects undertaken under this Act and its IRR as
26 projects of national significance, which shall be entitled to the following incentives:

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

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

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

4 B. *Criteria.* For a project to qualify as a project of national significance, it shall
5 meet the following criteria:

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

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

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

11 (d)The project can create new jobs.

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

16 *Sec. 22. PPP Center.* –

17 A. *Functions.* To achieve the goals of this Act, the PPP Center is hereby
18 institutionalized. It is hereby authorized to adopt its current organizational structure,
19 absorb its existing employees, and upgrade its human resource component, as may
20 be necessary, towards a more efficient and effective performance of the following
21 functions:

22 (a)Assist implementing agencies in identifying, developing, prioritizing and
23 maintaining a pipeline of PPP projects;

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

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

27 (d)Work with implementing agencies in setting procurement and
28 implementation timelines for approved PPP projects;

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

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

24 B. *Positions and Compensation.* All positions of the PPP Center shall be
25 governed by a compensation and position classification system and qualification
26 standards consistent with the industry and duly approved by the Governance
27 Commission for Government-Owned or –Controlled Corporations (GCG) based on
28 comprehensive job analysis and audit of actual institutional duties and personal
29 responsibilities. The compensation plan shall be comparable with the prevailing
30 compensation plan of Bangko Sentral ng Pilipinas, GFIs and other GOCCs, and shall
31 be subject to periodic review by the GCG no more than once every two (2) years,

1 without prejudice to yearly merit review or increases based on productivity and
2 efficiency.

3 C. *Attachment.* The PPP Center shall report directly to the PPP Governing
4 Board. It shall remain an attached agency under the administrative supervision of
5 the NEDA.

6 D. *Head.* The PPP Center shall be headed by an Executive Director with the
7 rank equivalent to an Undersecretary, who shall be appointed by the President of
8 the Philippines, upon recommendation of the PPP Governing Board. The Executive
9 Director shall perform the following functions:

10 (a) Undertake the day-to-day management and supervise the operations
11 of the PPP Center;

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

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

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

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

25 The Board shall be composed of the following:

26 (a) Secretary of Socio-economic Planning as Chairperson;

27 (b) Secretary of Finance as Vice-Chairperson;

28 (c) Secretary of Budget and Management;

29 (d) Secretary of Justice;

30 (e) Secretary of Trade and Industry;

31 (f) Executive Secretary;

1 (g)Executive Director of PPP Center; and

2 (h)Private sector Co-chairman of the National Competitiveness Council
3 (NCC).

4 A. *Alternates.* The principal members of the Board may designate their
5 respective alternates, who shall be the officials next-in-rank to them, and whose acts
6 shall be considered the acts of their principals.

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

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

15 D. *Honoraria.* The members of the Board shall be entitled to honoraria based
16 on existing government accounting and auditing rules and regulations.

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

22 Sec. 25. *Funding of Contingent Liabilities Arising from PPP Projects.* – To
23 ensure fiscal sustainability, enhance ability of the implementing agency to discharge
24 its obligations under risks allocated to it, and improve terms of financing of PPP
25 projects, there is hereby created a Contingent Liabilities Fund which shall be
26 financed through dedicated budgetary appropriations and contributions from the
27 budgets of implementing agencies. It may also be sourced from bid premiums. The
28 fund will provide a reliable pool from which disbursements on government
29 obligations on liabilities that have materialized can be drawn. As such any
30 appropriations and contributions to the fund are permanently appropriated and will
31 not revert to the general fund if not disbursed during the life of the project. The
32 fund shall be administered by the Department of Finance following fiduciary

1 standards for fund management. The operations of the fund can be enhanced
2 through Official Development Assistance.

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

8 *Sec. 26. Miscellaneous Provisions. –*

9 (a)*Joint Venture Agreements.* – For joint venture arrangements, the
10 ownership of the infrastructure facility may be transferred to either the
11 implementing agency or to the project proponent: *Provided,* That in the
12 latter case, the transfer shall be made under competitive market
13 conditions; *Provided, further,* That the equity contribution of the
14 implementing agency in a joint venture corporation shall in no case
15 exceed fifty percent (50%) of the outstanding capital stock of the said
16 corporation; and *Provided, finally,* That the return on investment of either
17 party shall be in proportion to their respective contribution.

18 (b)*Recovery of Investment.* – As may be agreed in the PPP contract, the
19 project proponent may be allowed to collect tolls, fees, rentals, or
20 charges, engage in commercial development, receive viability gap
21 funding, and receive direct government payments, among others, to
22 recover investment.

23 (c)*Wind-up and Transfer Measures.* – The PPP contract shall provide, as
24 may be appropriate, for:

25 (i) Mechanisms and procedures for the transfer of assets to the
26 implementing agency;

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

30 (iii) The transfer of technology required for the operation of the
31 infrastructure facility;

1 (iv)The training of the implementing agency's personnel or of a
2 successor in the operation and maintenance of the infrastructure facility;
3 and

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

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

13 (b) *Construction.* – If the Person, whether or not the Project Proponent, that
14 shall actually perform the Construction of the Infrastructure Facility is a
15 foreigner, such Person shall hire Filipino employees, if available, throughout
16 the period of Construction.

17 (c) *Operation.* – The Person, whether or not the Project Proponent, that shall
18 actually operate and maintain the Infrastructure Facility, including but not
19 limited to the collection of tolls, fees, rentals or charges from users of the
20 Infrastructure Facility, must be registered with the Securities and Exchange
21 Commission

22 *Sec. 27. Implementing Rules and Regulations.* – The NEDA, DOF, DBM,
23 DPWH, DILG, Department of Justice, Department of Trade and Industry, Office of
24 the President, Department of Transportation and Communications, Department of
25 Environment and Natural Resources, PPP Center and private sector Co-chairman of
26 the NCC shall constitute the IRR Committee. Within sixty (60) days from the
27 effectivity of this Act, the PPP Center shall formulate and prescribe, in consultation
28 with the IRR Committee, after public hearing and publication as required by law, the
29 rules and regulations to implement the provisions of this Act. The IRR shall be
30 approved by the PPP Governing Board.

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

5 *Sec. 28. Transitory Provisions.* – All unexpended funds for the calendar year,
6 properties, equipment, contracts and records of the PPP Center are hereby retained.
7 The amount necessary to carry out the organizational changes of PPP Center
8 provided in this Act shall be determined by the PPP Governing Board. Appropriations
9 for succeeding years shall be incorporated in its budget proposals for Congressional
10 action.

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

13 *Sec. 29. Repealing Clause.* – Republic Act No. 7718, Republic Act No. 6957,
14 Sec. 3(a) of Presidential Decree (PD) No. 1112, Section 2 of PD No. 1894, and
15 Executive Order (EO) No. 08 (s. 2010) as amended by EO 136 (s. 2013), EO 78 (s.
16 2012), Section 8 of EO No. 423 (s. 2005), 2013 Revised Guidelines and Procedures
17 for Entering Into Joint Venture Agreements Between Government and Private
18 Entities, Joint Venture Guidelines issued by LGUs, and PPP Codes issued by LGUs,
19 are hereby repealed. All other laws, rules and regulations or parts thereof
20 inconsistent with the provisions of this Act are hereby repealed or modified
21 accordingly.

22 *Sec. 30. Separability Clause.* – If any provision of this Act is held invalid, the
23 other provisions not affected thereby shall continue in operation.

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

Approved,