

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 122

HOUSE OF REPRESENTATIVES	
RECEIVED	
DATE:	<u>30 JUN 2016</u>
TIME:	<u>3:00</u>
BY:	<u>[Signature]</u>
REGISTRATION UNIT BILLS AND INDEX SERVICE	

Introduced by: REPRESENTATIVE CELSO L. LOBREGAT

AN ACT
CREATING THE MINDANAO POWER CORPORATION
AND PROVIDING FUNDS THEREFOR

EXPLANATORY NOTE

This is a re-filed bill, which adopts the substitute bill approved on May 19, 2015 during the Joint Committee Meeting of the Committees on Government Enterprises and Privatization, Energy and Mindanao Affairs, which consolidated House Bill Nos. 676, 4883, and 2621, originally filed during the 16th Congress, by Representatives Edgardo Masongsong, Rufus and Maximo Rodriguez and the undersigned, respectively. Said substitute bill was also approved by the Committee on Ways and Means on September 22, 2015.

Republic Act No. 9136 or the Electric Power Industry Reform Act (EPIRA) of 2001 which liberalized and privatized the power industry, was aimed at securing the country's power supply and reducing cost of electricity through greater competition and efficiency. It was intended to free the government from subsidizing capital-intensive power projects, and allow instead the private sector to put up these crucial projects. Thus, the law directed the government to privatize or sell its power generation assets and the capacities it contracted with the independent power producers (IPPs). However, more than a decade after the law's enactment, power outages, particularly in Mindanao, continue to be experienced by consumers.

The most concrete effect of the EPIRA specific to Mindanao is the treatment extended to Agus-Pulangi Hydropower Complexes. The Agus-Pulangi Hydropower Complexes continue to bring low power rates in Mindanao. For the first 10 years of EPIRA's enforcement, Mindanao's Agus and Pulangi hydropower complexes, located in Lanao del Sur and Bukidnon provinces, respectively, were exempted from privatization. The EPIRA provided that the ownership of the Agus and Pulangi power complexes was to be transferred to the Power Sector Assets and Liabilities Management Corp. (PSALM), the state agency that was created to handle the privatization of National Power Corporation's (NPC's) assets, and that both would continue to be operated by NPC. After 10 years, the privatization of the Agus and Pulangi complexes was to be left to the discretion of PSALM in consultation with Congress, as the law provided.

This bill seeks for the non-privatization of Agus-Pulangi hydropower complexes, which are considered as the crown jewels of the Mindanao power industry, and to formulate a viable way to operate and maintain these assets that provide majority of the electricity in Mindanao. There were calls to stop the sale of the Agus and Pulangi complexes since these are sources of cheap power in Mindanao that should not fall into the hands of profit-driven private interest. Policy should be adopted on the non-privatization of the Agus-Pulangi hydropower complexes because these are essential to the public welfare of the communities of Mindanao and would be better left under government control considering their inherently profitable nature, and therefore, the operation, maintenance, expansion, and/or improvement of such hydropower complexes could be done with no government subsidy, while sustaining the required level of power supply in Mindanao.

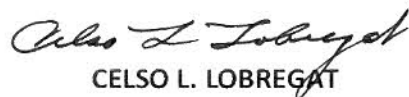
There are two issues related to the matter. First argument is that non-privatization of the Agus-Pulangi hydropower complexes would discourage entry of private investors because they will not be able to compete with low power rates of the hydroelectric complex. The demand for power in Mindanao has continuously risen through the years with rapid urbanization and increased industrialization and citing 2015 data from the Department of Energy (DOE), of the total 2,067 megawatts committed capacity and 1,939.33 indicative capacity of Mindanao, 131.80 megawatts of committed capacity and 387.84 indicative capacity come from hydropower plants, such as the Agus and Pulangi.

Second, there is an allegation that Mindanao electric cooperatives and consumers refuse to share the burden in the costs of power. This bill addresses this concern by having a Mindanao Power Corporation (MINPOCOR) with regulated rates that enable it to raise (a) sufficient funds for buying Agus-Pulangi from NPC/PSALM; (b) sufficient funds for operating and maintaining such assets efficiently; and (c) sufficient funds for improving such assets.

The creation of the MINPOCOR was first proposed by the Mindanao Development Authority (MinDA) during the 2012 Mindanao Power Summit. The Philippine Chamber of Commerce and Industry (PCCI) immediately expressed its support considering that the Agus-Pulangi hydropower plants are Mindanao's patrimony and should be in government hands.

It is the government's duty and responsibility to promote the economic development of the country, particularly the Mindanao region, and the availability of electricity at reasonable cost as a catalyst for economic growth.

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


CELSON L. LOBREGAT
Representative
Zamboanga City, 1st District

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SEVENTEENTH CONGRESS
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HOUSE BILL NO. 122

Introduced by: **REPRESENTATIVE CELSO L. LOBREGAT**

AN ACT
CREATING THE MINDANAO POWER CORPORATION
AND PROVIDING FUNDS THEREFOR

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

1 **SECTION 1. Short Title.**-This Act shall be known as the "Charter of the Mindanao
2 Power Corporation (MINPOCOR)".

3 **SEC. 2. Declaration of State Policy.**-It is the policy of the State not to privatize
4 the Agus and Pulangui hydropower complexes in Mindanao because these are essential
5 to public welfare. The public would be better served and benefited if the government
6 retains ownership and control over these inherently profitable hydropower plants.
7 There would be no need for government subsidy for the operation, maintenance,
8 expansion, and improvement of these hydropower complexes, even as the required
9 level of power supply in Mindanao is sustained.

10 It is the government's duty and responsibility to promote the economic
11 development of the country, particularly the Mindanao region, and the availability of
12 electricity at reasonable cost is a catalyst for economic growth.

13 Towards this end, the National Government shall ensure the dependable and
14 reliable supply of electric power through the acquisition by the appropriate government
15 agency of the generation assets of the Power Sector Assets and Liabilities Management
16 (PSALM) located in Agus and Pulangui, hereinafter referred to as the Agus-Pulangui
17 Hydropower Complexes (APHC), an assurance that the electricity rates shall, at all
18 times, reflect the true cost of power.

19 The creation of an organized government-owned corporate entity in Mindanao
20 is necessary to attain these ends.

1 **SEC. 3. Definition of Terms.-** The following terms are herein defined as follows:

2 (a) *Distribution of electricity* refers to the conveyance of electric power by a
3 distribution utility through its distribution system.

4

5 (b) *Distribution Utility* refers to any electric cooperative, private corporation,
6 government-owned utility or existing local government unit which has an exclusive
7 franchise to operate an electric power distribution system in a specified area.

8

9 (c) *Electric cooperative* refers to an electric power distribution utility
10 organized pursuant to Presidential Decree No. 269, otherwise known as the National
11 Electrification Administration Decree, as amended.

12

13 (d) *End-user* refers to any person or entity requiring the supply and delivery of
14 electricity for its own use.

15

16 (e) *NPC-Mindanao Generation* refers to the Mindanao office of the National
17 Power Corporation.

18

19 (f) *Return-On-Rate-Base or RORB* refers to the rate setting methodology that
20 allow public utilities to recover just and reasonable costs and earn a reasonable return
21 so as to enable such entities to operate viably.

22

23 (g) *Retail Rate* refers to the total price paid by end-users consisting of the
24 charges for generation, transmission and related ancillary services, distribution, supply
25 and other related charges for electric service.

26 **SEC. 4. Creation, Name, Domicile, and Term.-** There is hereby created a
27 government-owned and –controlled corporation to be known as the Mindanao Power
28 Corporation(MINPOCOR), hereinafter referred to as the "Corporation", under the Office
29 of the President of the Philippines and attached to the Department of Energy for policy
30 supervision.

31 The principal office of the Corporation shall be determined by its Board of
32 Directors: *Provided*, That such office shall be located in the Island of Mindanao. It may
33 also establish liaison or satellite offices, branches, agencies or correspondents, or other
34 units in other parts of the Philippines as its business operations may require.

1 The Corporation shall have a term of fifty (50) years from its creation hereof and
2 shall be deemed renewed for an equal period unless sooner dissolved by law. The
3 Corporation shall be covered by the provisions of Republic Act No. 10149, otherwise
4 known as the "GOCC Governance Act of 2011", and be subject to the regulatory
5 jurisdiction of the Governance Commission for GOCCs (GCG).

6 **SEC.5. Powers and General Functions.**-The powers, functions, rights and
7 activities of the Corporation shall be the following:

- 8 a. To have continuous succession under its corporate name until otherwise
9 provided by law;
- 10 b. To prescribe its by-laws not inconsistent with this Act;
- 11 c. To adopt and use a seal and alter it at its pleasure;
- 12 d. To sue and be sued in any court of law;
- 13 e. To conduct investigations and surveys for the development of water power
14 in the Mindanao region;
- 15 f. To take water from any public stream, river, creek, lake, spring, or
16 waterfall in Mindanao, for the purposes specified in this Act; to intercept
17 and divert the flow of waters from lands of riparian owners and from
18 persons owning or interested in waters which are or may be necessary for
19 said purposes, upon payment of just compensation therefor; to alter,
20 straighten, obstruct or increase the flow of water in streams or water
21 channels intersecting or connecting therewith or contiguous to its works or
22 any part thereof: *Provided*, That just compensation shall be paid to any
23 person or persons whose property is, directly or indirectly, adversely
24 affected or damaged thereby;
- 25 g. To operate, maintain, repair, rehabilitate, expand, or improve the APHC
26 acquired from the PSALM under the terms and conditions provided in this
27 Act with authority to sell electric power in bulk to electric cooperatives,
28 distribution utilities, and other entities in accordance with this Act;
- 29 h. To adopt measures necessary and desirable to ensure sufficiency of power
30 it committed to electric cooperatives and distribution utilities, and to
31 supply power in Mindanao in general, including the expansion of existing
32 power plants, establishment of new hydropower plants, and contracting of
33 ancillary or support services with other power generators, subject to the
34 market share limitation as provided in Republic Act No. 9136, otherwise
35 known as the "Electric Power Industry Reform Act of 2001";

- 1 i. To acquire whether by way of negotiation or by eminent domain, promote,
2 hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise
3 dispose of property incident to, or necessary, convenient, or proper to
4 carry out the purposes for which the Corporation was created;
- 5 j. Subject to Constitutional requirements and with mandate from the
6 President of the Philippines, to exercise the authority to operate idle
7 power plants in Mindanao, whether temporarily or permanently, to curb
8 any imminent and actual Mindanao power shortages that would impact on
9 the national interest;
- 10 k. To construct work across or otherwise, any stream, watercourse, canal,
11 ditch, flume, street, avenue, highway, or railway of private and public
12 ownership, as the location of said works may require: *Provided*, That said
13 works shall be constructed in such a manner as not to endanger life or
14 property: *Provided, further*, That the stream, watercourse, canal, ditch,
15 flume, street, avenue, highway, or railway so crossed or intersected shall
16 be restored as near as possible to their former state, or in a manner not to
17 impair unnecessarily their usefulness. Every person or entity whose right-
18 of-way or property is lawfully crossed or intersected by said works shall
19 not obstruct any such crossings or intersection and shall grant the
20 Corporation or its representative, the proper authority for the execution of
21 such work. The Corporation is hereby given the right-of-way to locate,
22 construct and maintain such works over and throughout the lands owned
23 by the Republic of the Philippines or any of its branches and political
24 subdivisions. The Corporation or its representative may also enter upon
25 private property in the lawful performance or prosecution of its business
26 and purposes, including the construction of the transmission lines thereon:
27 *Provided*, That the owner of such private property shall be indemnified for
28 any actual damage caused thereby: *Provided, further*, That said action for
29 damages is filed within five (5) years after the rights-of-way have been
30 established: *Provided, finally*, That after the said period, no suit shall be
31 brought to question the said rights-of-way, transmission lines, substations,
32 plants, or other facilities;
- 33 l. To exercise the right of eminent domain for the purpose of this Act in the
34 manner provided by law for instituting condemnation proceedings by the
35 national, provincial, and municipal governments;
- 36 m. When essential to the proper administration of its corporate affairs or
37 necessary for the proper transaction of its business or to carry out the
38 purposes for which it was organized, to contract indebtedness and issue

bonds subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance;

n. To invest in the power industry, as well as in any activity related to energy resources development, and to set-up or form business subsidiaries under the provisions of Batas PambansaBlg. 68, otherwise known as the Corporation Code of the Philippines, or through the acquisition of the controlling interests of existing corporations which may be necessary or will contribute to the economic development of the Mindanao region, or important in the public interest, or deemed convenient or incidental to the carrying on of any of the purposes of the Corporation, or which will promote the well-being of the Corporation;

o. To exercise such powers and do such things as may be reasonably necessary to carry out the business and purposes for which it was organized, or which, from time to time, may be declared by the Board to be necessary, useful, incidental, or auxiliary to accomplish the said purpose;

p. To exercise complete jurisdiction and control over the watersheds surrounding the reservoirs of the APHC and other plants or projects constructed or proposed to be constructed by the Corporation. For this purpose, the National Power Corporation (NAPOCOR) and the PSALM shall, upon written advice by the Corporation, forthwith surrender jurisdiction to the Corporation all areas embraced within the watersheds that the NAPOCOR currently holds in Mindanao, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply. For new projects and upon determination by the Corporation of the areas required for watersheds for specific projects in Mindanao, the Department of Environment and Natural Resources and any attached agency thereof as well as other relevant government agencies, institutions, or entities shall, upon written advice, surrender jurisdiction to the Corporation all areas embraced within the said watersheds, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply. A proportionate share of the watershed management fees being collected by these concerned agencies likewise shall be automatically transferred to the Corporation to be used for the management of the watersheds of the APHC and those surrounding other power plants or projects of the Corporation;

q. To extend the benefits of the APHC to the greatest number of the population as possible, with preferential right to benefit accorded to

- 1 energy consumers and host communities where such energy or water
2 resources originate;
- 3 r. To cooperate with and to coordinate its operations with those of the
4 National Electrification Administration and public service entities, as may
5 be appropriate;
- 6 s. In the prosecution and maintenance of its projects, the Corporation shall
7 adopt measures to prevent environmental pollution and promote the
8 conservation, development, and maximum utilization of natural resources;
9 and,
- 10 t. Generally, to exercise all the powers of a corporation under the
11 Corporation Code of the Philippines insofar as they are not inconsistent
12 with the provisions of this Act.

13 **SEC. 6. Acquisition of APHC Facilities, Intangible Assets, and Liabilities.**—The
14 Corporation shall acquire by purchase all existing APHC facilities, plants, lands, buildings
15 and other properties, movable and immovable, and all assets, powers, rights, interests
16 and privileges relating to hydroelectric power plant operations, including all equipment
17 which are necessary for their operations, from the PSALM pursuant to Republic Act No.
18 9136, otherwise known as the Electric Power Industry Reform Act of 2001. The value of
19 these assets shall be determined by the Commission on Audit.

20 The acquisition cost of the APHC including their existing liabilities, which shall
21 also be transferred to the Corporation, shall be amortized for twenty-five (25) years.

22 **SEC. 7. Disposition of Hydroelectric Power.**—The Corporation shall have authority
23 to sell hydroelectricity pursuant to the following parameters or as may be determined
24 by the Board:

- 25 a. The existing capacity of the APHC shall be allocated pro-rata primarily to
26 electric cooperatives and distribution utilities, the majority of whose
27 customers are residential ratepayers in Mindanao.
- 28 b. Consumers other than electric cooperatives and distribution utilities may
29 contract for direct supply of electricity that has been unsold or uncommitted
30 to Mindanao electric cooperatives and distribution utilities.
- 31 c. To devise ways and means of giving direct benefits to the province, city, or
32 municipality, especially the communities and people affected, and equitable
33 and preferential benefit to the region that hosts the energy resource or the
34 energy-generating facility: *Provided, however,* That the other provinces,
35 cities, municipalities, or regions shall not be deprived of their energy
36 requirements. For this purpose, the relevant provisions under sections 289

1 to 294, Chapter 2, Title III, Book II, of Republic Act No. 7160 or the Local
2 Government Code of the Philippines, shall continue to apply;

- 3 d. If and when possible, the Corporation may participate in the Wholesale
4 Electric Spot Market (WESM) provided that any and all its income shall be
5 utilized solely for operating, maintaining, expanding, and improving the
6 hydropower complexes and its other assets.

7 Existing power supply agreements involving the APHC shall, within a period of
8 one year from the effectivity of this Act, be reviewed and renegotiated to comply with
9 the foregoing parameters. Non-committed power generated by the APHC shall
10 immediately be allocated to electric cooperatives and distribution utilities that cater
11 mainly to residential ratepayers.

12 **SEC.8.Rate-fixing.**-The rates charged by the Corporation shall be subject to
13 approval by the Energy Regulatory Commission (ERC) and the following guidelines, as
14 follows:

- 15 a. Rates shall allow the recovery of just and reasonable costs and a reasonable
16 return on rate base (RORB) or other internationally accepted methodology
17 to enable the Corporation to operate viably. In case the rate setting
18 methodology used is RORB, it shall be subject to the following guidelines:
- 19 (i) For purposes of determining the rate base, the Corporation may
20 be allowed to revalue its eligible assets not more than once every three
21 (3) years by an independent appraisal company: *Provided, however,*
22 That ERC shall exert efforts to minimize price shocks in order to protect
23 the consumers;
- 24 (ii) Interest expenses are not allowable deductions from permissible
25 return on rate base;
- 26 (iii) In determining eligible cost of services that will be passed on to the
27 end-users, the ERC shall establish minimum efficiency performance
28 standards for the Corporation including systems losses, interruption
29 frequency rates, and collection efficiency;
- 30 (iv) Further, in determining the rate base, the Corporation shall not be
31 allowed to include management inefficiencies like cost of project
32 delays not excused by force majeure, penalties, and related interest
33 during construction applicable to these unexcused delays; and
- 34 (v) Any significant operating costs or project investments of the
35 Corporation which shall become part of the rate base shall be subject
36 to verification by the ERC to ensure that the contracting and
37 procurement of the equipment, assets, and services have been

1 subjected to transparent and accepted industry procurement and
2 purchasing practices to protect the public interest.

3 b. The rate shall ensure that the Corporation would be able to service the
4 acquisition cost of the APHC;

5 c. The rate is sufficient for operating and maintenance expenses, as well as
6 capital expenditures projected to be necessary within the next ten (10) years
7 pursuant to a development plan: *Provided*, That interest on loans and other
8 debts shall not be included as expenses.

9 d. The rate allows for systems losses subject to the caps determined by the ERC
10 based on the load density, sales mix, cost of service, delivery voltage, and
11 other technical considerations it may promulgate.

12 **SEC.9. Authorized Capital.** – The Corporation shall have an authorized capital
13 stock equal to:

14 (a) The value of APHC fixed assets, including dams, facilities, and equipment,
15 and such other properties pertaining to the APHC, movable and immovable, as valued
16 on the date of the acquisition thereof pursuant to Section 6 hereof; and

17 (b) The value of such real estate owned or administered by the NPC-MinGen
18 in connection with its operation of the APHC.

19 The National Government shall make additional equity investment into the
20 Authority out of funds appropriated in the annual General Appropriations Act.

21 **SEC.10. Board of Directors; Composition; Qualifications; Compensation of**
22 **Members; Powers and Duties.** – The powers of the Corporation shall be vested in and
23 exercised by the Board composed of eleven (11) directors consisting of the Chairperson
24 of the Mindanao Development Authority and the Secretary of the Department of
25 Energy (DOE) as co-chairpersons; the General Manager of the Corporation as the vice-
26 chairperson; the Secretary of the Department of Finance (DOF), the Secretary of the
27 Department of Environment and Natural Resources, a representative of the Governor of
28 the ARMM or its successor entity, as ex-officio members; and the following other
29 members to be appointed by the President of the Philippines from a shortlist prepared
30 by the GCG in accordance with the provisions of Republic Act No. 10149: One (1)
31 representative from Mindanao electric cooperatives; One (1) representative from
32 Mindanao private distribution utilities; One (1) representative from the education or
33 academic community in Mindanao; One (1) representative from Mindanao consumers
34 or rate-payers; and One (1) representative of the business or private sector.

35 The chairpersons and the Secretaries of the DOF, DOE, DENR, the General
36 Manager, and the representative of the ARMM Governor or its successor entity shall sit
37 in an ex-officio capacity. The other members of the board shall each serve a term of one

1 (1) year, subject to reappointment, pursuant to Republic Act No. 10149, except that any
2 person appointed to fill a vacancy shall serve only for the unexpired term of the
3 member being succeeded. The General Manager shall be appointed annually by the
4 members of the Board from among their ranks.

5 Except for the directors who sit in an *ex officio* capacity, every member of the
6 Board shall possess any one or a combination of the following qualifications: a duly
7 licensed professional or with recognized competence in engineering or any other
8 energy-related discipline, environmental science, business management and finance,
9 or law, and of good moral character. Every member of the Board must also be qualified
10 by the "Fit and Proper Rule" as determined by the GCG in accordance with the
11 provisions of Republic Act No. 10149. All appointive members of the Board, including
12 the General Manager, shall be residents of Mindanao for at least five (5) years prior to
13 their appointment.

14 A majority of the members of the Board shall constitute a quorum for the
15 transaction of the business of the Board.

16 The General Counsel of the Corporation shall be the ex-officio Secretary of the
17 Board.

18 The members of the Board and the Board Secretary shall receive a per diem and
19 allowances for actual meetings attended or actual work done in such amounts as
20 generally practiced in the industry.

21 **SEC.11.Powers and Functions of the Board.**-The Board shall have the following
22 specific powers and duties:

- 23 (a) To formulate and adopt policies and measures for the management and
24 operation of the Corporation:*Provided*, That policies and measures for the
25 management and operation of the Corporation that impact on the rates or
26 otherwise affects the prices of electricity sold to residential consumers shall
27 be subject to approval by the ERC;
- 28 (b) To adopt an annual and supplemental budget of receipts and expenditures
29 of the Corporation according to its requirements, which may include
30 financial assistance to municipalities which are the site of or are contiguous
31 to watersheds, lakes, or natural sources of hydroelectric power being
32 utilized by the Corporation, subject to the approval of the Energy
33 Regulatory Commission (ERC): *Provided*, That copies of the budgets or
34 receipts and expenditures herein referred to shall be disclosed to and shall
35 be subject of audit and verification by the ERC during rate fixing;
- 36 (c) Subject to the provisions of existing laws and regulations and upon the
37 recommendation of the General Manager, to organize, reorganize and

1 determine the Corporation's staffing pattern and the number of personnel;
2 to fix their salaries; and to define their powers and duties: *Provided*, That
3 the Corporation shall be covered by the Compensation and Position
4 Classification System (CPCS) for GOCCs under Republic Act No. 10149 as
5 approved by the President of the Philippines: *Provided, further*, That prior
6 approval from the GCG shall be obtained therefor;

7 (d) To appoint and fix the compensation of the General Manager, Assistant
8 General Manager, Regional Managers, and Department Heads;

9 (e) For cause, to suspend or remove, by majority vote of all members of the
10 Board, the Assistant General Manager, Regional Managers, and Department
11 Heads; and

12 (f) To adopt and set down guidelines for the employment of personnel on the
13 basis of merit, technical competence, and moral character.

14 **SEC. 12. The General Manager; Powers and Duties; Regional Managers, and**
15 **Other Officers and Employees of the Corporation.**-The management of the Corporation
16 shall be vested in the General Manager, assisted by an Assistant General Manager, a
17 Department Head for Finance, a Department Head for Engineering and Construction, a
18 Department Head for Administration, and such additional officers and employees as the
19 Board may provide and choose. For this purpose, the General Manager shall have the
20 following powers and duties:

21 (a) To execute and administer the policies and measures approved by the
22 Board, and have the responsibility for the efficient discharge of
23 management functions;

24 (b) To submit for the consideration of the Board such other policies and
25 measures deemed necessary to carry out the purposes and provisions of
26 this Act;

27 (c) To direct and supervise the operation and internal administration of the
28 Corporation and, for this purpose, may delegate some or any of his
29 administrative responsibilities and duties to other officers of the
30 Corporation;

31 (d) Subject to the guidelines and policies prescribed by the Board, to appoint
32 and fix the number and compensation of other officials and employees of
33 the Corporation not herein provided; and, for cause, to remove, suspend or
34 otherwise discipline any subordinate employee with the approval of the
35 Board;

36 (e) To prepare an annual report on the activities of the Corporation at the close
37 of each fiscal year and submit a copy thereof to the Board for transmittal to

1 the President of the Philippines, President of the Senate, Speaker of the
2 House of Representatives, the Joint Congressional Power Corporation
3 (JCPC), and to the chairman of the committee concerned in the Senate and
4 in the House of Representatives: *Provided*, That the Corporation shall
5 similarly submit to the respective chairperson of the said committees of
6 Congress a report of its operations and financial statements within fifteen
7 (15) days from the end of every quarter: *Provided, further*, That said
8 committees, either motu proprio or upon the request of any of their
9 members, or of any Member of Congress, as the case may be, shall have the
10 authority to look into all the matters relative to the financial and business
11 operations and expenditures of the Corporation;

- 12 (f) To exercise such other powers and duties as may be vested by the Board
13 from time to time. In the absence or disability of the General Manager, the
14 Assistant General Manager shall act in his place.

15 Under the supervision and control of the General Manager, relevant officers of
16 the Corporation shall take charge of the operations of the Corporation as well as its
17 power development program.

18 **SEC. 13. Authority to Incur Indebtedness and Issue Bonds; Conditions,**
19 **Privileges and Exemptions, Sinking Funds; and Guarantee thereof.-**

20 (a) Domestic Indebtedness.-Whenever the Board deems it necessary for the
21 Corporation to incur indebtedness or to issue bonds to carry out the purpose for which
22 the Corporation has been organized, it shall, by resolution, so declare and state the
23 purpose for which the proposed debt is to be incurred and the conditions of the bonds.
24 In order that such resolution be valid, it shall be passed by affirmative vote of at least
25 four (4) members of the Board and approved by the President of the Philippines upon
26 recommendation of the Secretary of Finance.

27 The bonds shall be issued under the following conditions: (1) they shall be in
28 registered form and transferable at the Office of the Treasurer of the Philippines; (2)
29 they shall not be sold at less than par; (3) they shall be payable for ten (10) years or
30 more from date of issue as may be determined by the Secretary of Finance before their
31 issuance but may be redeemable, at the pleasure of the Board, after five (5) years from
32 such date of issue; (4) they shall bear interest at an annual rate to be determined
33 before their issuance by the Secretary of Finance; (5) interest maybe payable quarterly,
34 semi-annually, or annually as may be determined by the Secretary of Finance before the
35 issuance of the bonds; and (6) both principal and interest shall be payable in legal
36 tender of the Philippines.

37 The bonds issued under the authority of this subsection shall be exempt from
38 the payment of all taxes by the Republic of the Philippines, or by any authority, branch,

1 division, or political subdivision thereof which facts shall be stated upon the face of said
2 bonds. Said bonds shall be receivable as security in any transaction with the
3 Government in which such security is required.

4 A sinking fund shall be created, the total thereof at each annual due date of the
5 bonds shall be equal to an amount of annuity earning an annual interest of nine-tenths
6 (9/10) of the rate of interest of the bonds as fixed by the Secretary of Finance.

7 The Republic of the Philippines or any of its agencies, instrumentalities,
8 organized for the purpose of issuing guarantees, shall guarantee the payment by the
9 Corporation of both the principal and the interest of the bonds issued by said
10 Corporation by virtue of this Act, and shall pay such principal and interest in case the
11 Corporation fails to do so. Such government guarantees shall be covered by the sums
12 necessary to make the payments guaranteed by this Act duly appropriated, out of the
13 general funds in the National Treasury not otherwise appropriated, the sums necessary
14 to make the payments guaranteed by this Act: *Provided*, That the sums so paid by the
15 Republic of the Philippines shall be refunded by the Corporation: *Provided, further*, That
16 the Corporation shall set aside ten per centum (10%) of its annual net operating
17 revenues before interests as a reserve or sinking fund to answer for amounts advanced
18 to it by the National Government for any loan, credit and indebtedness contracted by
19 the former for which the latter shall be held answerable as primary obligor or guarantor
20 under the provisions of this Act: *Provided, furthermore*, That the setting aside of the
21 amounts mentioned herein shall automatically cease the moment the accumulated
22 sinking fund or reserve exceeds the amounts advanced to the Corporation by the
23 National Government under this Act: *Provided, finally*, That the Corporation may
24 periodically make partial payments to the National Government out of the said
25 reserves.

26 The total principal indebtedness of the Corporation under this subsection,
27 exclusive of interest, shall not at any time exceed Ten billion pesos
28 (P10,000,000,000.00)

29 (b) Foreign Loans.- The Corporation is hereby authorized to contract loans,
30 credits, any convertible foreign currency or capital goods, and indebtedness from time
31 to time from foreign governments, or any international financial institutions or fund
32 sources the total outstanding amount of which, exclusive of interests, shall not exceed
33 One Billion United States dollars (US\$1,000,000,000.00) or the equivalent thereof in
34 other currencies, on such terms and conditions as it shall deem appropriate for the
35 accomplishment of its purposes and to enter into and execute agreements and other
36 documents specifying such terms and conditions.

37 The President of the Philippines, by himself, or through the Secretary of Finance
38 or the Governor of the BangkoSentral ng Pilipinas, is hereby authorized to negotiate
39 and contract with foreign governments or any international financial institutions, in the

1 name and on behalf of the Corporation, one or several loans, for the use of the
2 Corporation.

3 The President of the Philippines, by himself, or through the Secretary of Finance
4 or the Governor of the Bangko Sentral ng Pilipinas, is hereby further authorized to
5 guarantee, absolutely and unconditionally, as primary obligor and not as surety merely,
6 in the name and on behalf of the Republic of the Philippines, the payment of the loan or
7 loans herein authorized as well as the performance of all or any of the obligations
8 undertaken by the Corporation in the territory of the Republic of the Philippines
9 pursuant to loan agreements entered into with foreign governments or any
10 international financial institutions.

11 Negotiation and contracting of any loan, credit, or indebtedness under this
12 subsection shall be subject to applicable laws.

13 The loans, credits, and indebtedness contracted under this subsection and the
14 payment of the principal, interest and other charges thereon, as well as the importation
15 of machinery, equipment, materials, and supplies by the Corporation, paid from the
16 proceeds of any loan, credit, or indebtedness incurred under this Act, shall also be
17 exempt from all taxes, fees, imposts, other charges and restrictions, including import
18 restrictions, by the Republic of the Philippines, or any of its agencies and political
19 subdivisions.

20 **SEC. 14. Rehabilitation, Expansion, Construction of the Agus-Pulangui**
21 **Hydropower Complexes and other Power Projects Recommended by the General**
22 **Manager.**-Upon determination by the General Manager, on his own initiative or on the
23 recommendation of any interested party, that the construction of any project by the
24 Corporation is advisable, a report to the Board on the engineering and economic
25 feasibility of the project together with preliminary plans and estimates of the cost of
26 the proposed development and the estimated income to be derived therefrom shall be
27 submitted by the General Manager.

28 **SEC. 15. Construction or Repair Work Awarded upon Public Bidding:**
29 **Exceptions.**- All work of construction or repair of the Corporation involving an
30 estimated cost of One million pesos (P1,000,000.00) or more shall be awarded by the
31 General Manager, with the approval of the Board, to the responsible bidder who made
32 the lowest or most advantageous bid. Notice to bidders shall be published as provided
33 by law. In case no satisfactory bid is received, the General Manager may proceed to
34 advertise anew, or with the approval of the Board, do the work by administration.
35 Before award of contract is made, the General Manager shall require the contractor to
36 give an adequate bond to secure the proper accomplishment of the work under
37 contract and to satisfy all obligations for materials used and labor employed upon the
38 same: *Provided*, That any repair, reconstruction or other work of an emergency nature
39 may be authorized by the Board to be undertaken by administration or by

1 contract:*Provided, further,* That any single work of construction or repair involving an
2 estimated total cost of less than One Million Pesos (P1,000,000.00) may, at the option
3 of the General Manager, be authorized by him to be undertaken by administration or by
4 other advantageous means after a canvass of the market to determine the lowest or
5 most advantageous price.

6 **SEC. 16. *Penalty for Destroying, Injuring or Interfering with any project of the***
7 ***Corporation, or maliciously Interfering with any Person in the Discharge of his Duties***

8 ***Connected therewith.***-Any person or persons who shall maliciously destroy, injure, or
9 interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bulkhead, dam, gate,
10 sluice, reservoir, aqueduct, conduit, pipes, culvert, post, abutment, conductor, cable-
11 wire, insulator, weir, benchmark, monument, or other works, appliance, machinery,
12 building, or property of the Corporation, or who shall maliciously do any act which shall
13 injuriously affect the quantity or quality of the water or electrical energy of the
14 Corporation or the supply, transmission, measurement, or regulation thereof, or who
15 shall maliciously interfere with any person engaged in the discharge of duties
16 connected therewith, or who shall maliciously prevent, obstruct, and interfere with the
17 survey, works, and the construction of access road and transmission lines or any related
18 works of the Corporation, shall be guilty of felony and punished with a fine ranging from
19 one thousand pesos (P1,000.00) to Five thousand pesos (P5,000.00) or with
20 imprisonment ranging from one (1) to five (5) years, or both such fine and
21 imprisonment, at the discretion of the Court, and any injured party, shall have the right
22 to recover all damages suffered and cost of suit in a separate civil action in any court of
23 competent jurisdiction.

24 **SEC. 17. *Appropriation of Public Waters.***-Subject to existing rights, all
25 unappropriated public waters which may be used and developed for hydraulic power
26 purposes shall be granted to the Corporation:*Provided,* That in case of conflict with the
27 needs for domestic water supply, the latter shall prevail.

28 **SEC. 18. *Non-profit Character of the Corporation; Exemption from all Taxes,***
29 ***Duties, Fees, Imposts, and other Charges by Government and Governmental***
30 ***Instrumentalities.***- The Corporation shall be non-profit and shall devote all its returns
31 from its capital investment, as well as excess revenues from its operation, for operating,
32 maintaining, expanding and improving the hydropower complexes and its other assets.
33 It shall be subject to audit by the Commission on Audit.

34 To enable the Corporation to pay its indebtedness and obligations and in
35 furtherance and effective implementation of the policy enunciated in Section 1 of this
36 Act, the Corporation is hereby declared exempt:

- 37 (a) From the payment of all taxes, duties, fees, impost, charges, costs, and
38 service fees in any court or administrative proceedings in which it may be a

1 party, restrictions and duties to the Republic of the Philippines, its provinces,
2 cities, municipalities, and other government agencies and instrumentalities;

3 (b) From all income taxes, franchise taxes, and realty taxes to be paid to the
4 National Government, its provinces, cities, municipalities, and other
5 government agencies and instrumentalities;

6 (c) From all import duties, compensating taxes, and advanced sales tax, and
7 wharfage fees on import of foreign goods required for its operations and
8 projects; and

9 (d) From all taxes, duties, fees, imposts, and all other charges imposed by the
10 Republic of the Philippines, its provinces, cities, municipalities, and other
11 government agencies and instrumentalities, on all petroleum products used
12 by the Corporation in the generation, transmission, utilization, and sale of
13 electric power.

14 **SEC. 19. Appropriations.**-The amount necessary for the initial operations of the
15 Corporation shall be sourced from its earnings. Subsequent funding requirements, if
16 necessary, shall be included in the annual General Appropriations Act.

17 **SEC. 20. Transitory Provision.**- The ownership, possession, authority and
18 control of NPC-MinGen over the APHC and all other properties, assets, and facilities in
19 Mindanao, including its budgetary appropriations, finances, records, equipment, rights
20 as well as liabilities are hereby transferred to the Corporation.

21 The Board may reorganize the existing APHC personnel structure and the
22 current personnel placement of NPC-MinGen. Any incumbent employee of NPC-
23 MinGen who may be separated as a result of the said restructuring or who elects to
24 leave the service or retire shall be entitled to claim separation or retirement benefits as
25 may be provided under existing laws or issuances or be entitled to a separation plan
26 which shall be one and one-half month salary for every year of service in the
27 government excluding those already considered or paid in a prior separation plan,
28 whichever may be beneficial to the employee concerned: *Provided, however,* That
29 those who avail of such privilege shall start their government service anew if absorbed
30 by any government agency, branch, unit, or any GOCC.

31 **SEC.21.Separability Clause.**-Should any provision of this Act is held to be invalid
32 or unconstitutional, the same shall not affect the validity and effectivity of the other
33 provisions hereof.

34 **SEC.22. Repealing Clause.**-Section 47(f) of Republic Act No. 9136, as well as all
35 laws, decrees, executive orders, rules and regulations and other issuances or part
36 thereof, which are inconsistent with this Act are hereby repealed, amended, or
37 modified accordingly.

1 **SEC.23. *Effectivity.***-This Act shall take effect fifteen (15) days after its
2 publication in the Official Gazette or in a national newspaper of general circulation.
3 Approved,