



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



EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 5452

Introduced by Representative **GERALDINE B. ROMAN**

EXPLANATORY NOTE

The Duterte administration's ambitious infrastructure program called *Build, Build, Build* aims to address decades of neglect in the country's public infrastructure. As stated by Budget and Management Secretary Benjamin E. Diokno, the Duterte Administration has "decided to prioritize the infrastructure gap that has hampered the competitiveness of the Philippine economy."¹

While the program is evidently succeeding, a leading economist urged the government to tap the private sector for partnership programs. "The absorptive capacity of infrastructure agencies need to be given an earnest look," said economist Cielito Habito, a columnist of the *Philippine Daily Inquirer*.² There was a perceived slowdown of public infrastructure projects at the start of 2019 and this delay is attributed to (a) delay in the approval of the national budget and (b) the two central departments for infrastructure [DPWH and DOTR] underspending their budgets.³ Tapping PPP again would boost *Build, Build, Build*, and the ambitious plan to spend more than Php 3 trillion on public infrastructure to stir economic growth, the economist added.

While PPP is not new in the country, the existing legislative framework needs to be revisited. As early as 2017, PPP Center Executive Director Ferdinand Pecson said that reforms would weigh heavily on removing conflicts of interest in PPP projects as well as providing for the speedy resolution of conflicts. Pecson said that, in the past, several projects have been stalled due to protracted negotiations and disputes.⁴

On a related note, the scope of partnership with the private sector in projects should not just be for "hard" infrastructure. Inclusions of "soft" or social infrastructure projects must be made. Of note is the increased collaboration of private businesses and local governments in

¹ Lifted from: <https://www.dbm.gov.ph/index.php/secretary-s-corner/press-releases/list-of-press-releases/1382-build-build-build-proof-of-efficient-leadership-and-political-will>. Last accessed on 29 October 2019, 10:05am.

² Lifted from: <https://business.inquirer.net/276860/top-economist-says-ppp-answer-to-risks-of-build-build-build-slowing-down#ixzz63nq3W77o>. Last accessed on 29 October 2019, 10:30am.

³ *Id.*

⁴ Lifted from: <https://www.philstar.com/business/2017/12/22/1770956/proposed-bot-law-changes-boost-ppp-governance#0TcxWUOv57B38hU3.99>. Last accessed on 29 October 2019, 2:30pm.

projects that greatly matter to those who live in localities where the national government is not in the best position to care for.

This Bill seeks to further develop and strengthen the framework for public and private sector collaborations by amending the current BOT Law, R.A. No. 6957, as amended by R.A. No. 7718. The major changes are as follows:

1. Institutionalizing the PPP Center of the Philippines.

The PPP Center is the main driver of the PPP programs in the country. It was created by E.O. No. 8-2010 and serves as the central coordinating and monitoring agency for all PPP projects. It champions the country's PPP Program by enabling implementing agencies in all aspects of project preparation, managing the Project Development and Monitoring Facility (PDMF), providing projects advisory and facilitation services, monitoring, and empowering agencies through various capacity-building activities.

2. Removing the investment threshold needed to avail of incentives.
3. Expansion of PPP projects to include social infrastructure projects such as prisons, education and health facilities, government buildings, tourism projects, climate change mitigation, and adaptation measures, etc.
4. Protecting PPP projects from being the subject of judicial reliefs as such TROs, except if issued by the Supreme Court.
5. Appointing for transparency and good governance four private sector representatives to be elected as members of the PPP Governing Board.

With these in mind, the passage of this bill is earnestly sought.


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AN ACT
AUTHORIZING PUBLIC-PRIVATE PARTNERSHIPS (PPP),
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

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

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

SEC. 2. *Declaration of Policy.* — It is the declared policy of the State to recognize the indispensable role of the private sector as one of the principal drivers for national growth and development. As such, the State shall adhere to following principles and policies:

- a) It shall create an enabling environment for PPP and provide the most appropriate incentives to mobilize private resources for the purpose of financing, designing, constructing, operating, and maintaining infrastructure projects and services normally financed and undertaken by the government. Such incentives, aside from financial incentives as provided by law, shall include provision of liberalized government regulations and procedures in support of the private proponent.
- b) It shall recognize the long-term nature of private investment in infrastructure projects and services by mitigating risks to ensure that the validity and enforceability of contracts are respected through the due process of law.
- c) It shall protect the public interest by providing affordable, accessible, and efficient public services and affirms open, transparent and competitive selection as the central tenet of government procurement in securing private investment in public infrastructure projects and services.

- d) It shall ensure fair and reasonable pricing and timely delivery of quality infrastructure and services through equitable risk allocation, subject to reasonable rules, and under the guiding principle of full public disclosure of all transactions.

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

- a) **Approving Body** — refers to an entity authorized to approve PPP projects proposed under this Act and its IRR, in accordance with Section 8 of this Act.
- b) **Availability-based PPP** — refers to a PPP where the implementing agency commits to make predetermined payments for contractually-defined performance delivery.
- c) **Concession-based PPP** — a PPP where the implementing agency grants the project proponent the right to recover its investment, operating and financing costs by charging the public a user fee or tariff.
- d) **Construction** — refers to new construction, rehabilitation, improvement, expansion, alteration, installation, and related works and activities in connection with an infrastructure facility, including the necessary supply of equipment, materials, labor and services and related items.
- e) **Contingent liability** — refers to obligations of the government arising from a valid PPP contract whose occurrence, timing, and amount depend on some uncertain future event or circumstance.
- f) **Contractor** — refers to any person, who may or may not be the project proponent, and who shall undertake the actual construction of an infrastructure facility.
- g) **Cooperation Period** — refers to the period of operation of an infrastructure facility, which period, in the case of public utilities requiring a franchise, such period shall not exceed the maximum period prescribed by existing laws.
- h) **Facility Operator** — refers to a person registered with the Securities and Exchange Commission, who may or may not be the project proponent, and who is responsible for all aspects of operation and maintenance of an infrastructure facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users.
- i) **Government undertakings** — refer to any form of support, contribution, assistance, Viability Gap Funding (VGF), among others, which the government may provide to a solicited PPP project.
- j) **Grantor** — refers to an implementing agency and other government agencies that own the project assets or franchise.
- k) **GOCC** — refers to a government-owned or controlled corporation as defined in Republic Act No. 10149.
- l) **ICC** — refers to the Investment Coordination Committee of the NEDA Board.

- m) **Implementing Agency** — refers to the Departments of the executive branch, their attached agencies, bureaus, and other government institution with own charters, and the local government units (LGUs), except barangays.

It also includes government-owned and controlled corporations (GOCCs) attached to these respective departments and agencies.

- n) **Infrastructure facility and related service** — refers to any facility and infrastructure-related service identified by the government in relation to or as necessary for the discharge of its functions, whether governmental or proprietary:

(1) **Infrastructure facility** — includes power plants, roads and highways, ports, airports, canals, dams, hydropower and other energy projects, water supply, irrigation, telecommunications facilities, railroads and railways, transport systems, reclaimed land, industrial estates or townships, housing, government buildings, bulk grain handling facilities, tourism projects, public parks, public markets, slaughterhouses, warehouses, information technology systems and infrastructure, education and health facilities, sewerage, and drainage.

(2) **Infrastructure-related service** — includes dredging, climate change mitigation and adaptation measures, logistics support system, solid waste management, and other related services.

- o) **IRR** — refers to the implementing rules and regulations of this Act.
- p) **LGU** — a local government unit.
- q) **Local PPP Project** — refers to a PPP Project that will be undertaken by an LGU.
- r) **National PPP Project** — refers to a PPP Project that will be undertaken by the national government and shall be approved by the NEDA Board upon Recommendation by the ICC. Such approval shall be carried by the implementing agency or grantor concerned.
- s) **NEDA** — refers to the National Economic and Development Authority.
- t) **PDMF** — refers to the Project Development and Monitoring Facility created under Section 9 of this Act.
- u) **PPP BAC** — refers to the PPP Bids and Awards Committee.
- v) **Public-Private Partnership (PPP)** — refers to contractual arrangement between the implementing agency and the project proponent for the financing, design, construction, operation, and maintenance, or any combination thereof, of an infrastructure facility, in which the project proponent bears significant risk, management responsibility, or both.
- w) **PPP Center** — refers to the Public-Private Partnership Center of the Philippines created under Executive Order No. 8, series of 2010, as amended.

- x) PPP Contract — refers to the contract between the implementing agency and the project proponent for the design, financing, construction, operation, or maintenance of an infrastructure facility under a PPP Project.
- y) PPP Project — refers to a project undertaken under this Act.
- z) Person — refers to an individual, sole proprietorship, partnership, corporation or any other form of organization, whether domestic or foreign.
- aa) Priority Project — refers to a project identified by an implementing agency that may be undertaken under this Act as a PPP project and is consistent with the Philippine Development Plan (PDP) or its equivalent at the local level.
- bb) Project Cost — refers to total capital cost, financing and other expenses for the design, construction, operation, and maintenance of an infrastructure facility, depending on the PPP contractual arrangement as provided for in Section 4 of this Act.
- cc) Project Proponent — refers to any private person who shall undertake a PPP project.
- dd) Rate of Return — refers to the maximum rate of return that a project proponent shall be entitled to, as determined by the Approving Body, taking into account, among others, the prevailing cost of capital in the domestic and international markets, the risks being assumed by the project proponent, and prevailing tariff on similar projects: Provided, That in case of an unsolicited proposal, such rate of return shall be determined by the appropriate Approving Body prior to the call for proposals.
- ee) Services — refers to technical services and other services related to infrastructure facilities such as, but not limited to, construction supervision, management, operation and maintenance and related services, which may be included as part of a PPP project.
- ff) Solicited PPP Project — refers to priority projects identified by the implementing agency.
- gg) Unsolicited PPP Project — project proposals submitted by a private person which are not in response to a formal solicitation or request issued by the implementing agency.
- hh) Viability Gap Funding (VGF) — refers to such financial support the government may provide to a concession-based PPP project with the objective of making user fees affordable while improving the commercial attractiveness of the project.

SEC. 4. *Variations of Contractual Arrangements.* — PPP Projects may be undertaken through any of the following contractual arrangements and such other variations as may be approved by the ICC:

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

- b) **Build-Lease-and-Transfer** — refers to a contractual arrangement whereby a project proponent undertakes to finance and construct an infrastructure facility and upon its completion turns it over to the implementing agency concerned on a lease arrangement for a cooperation period, after which ownership thereof is automatically transferred to the implementing agency concerned.
- c) **Build-Own-and-Operate** — refers to a contractual arrangement whereby a project proponent is authorized to undertake a PPP project, specifically to finance, construct, own, operate and maintain an infrastructure facility from which the project proponent is allowed to recover its total investment, operating and maintenance costs plus a return thereon by collecting tolls, fees, rentals or other charges from facility users.
- d) **Build-Operate-and-Transfer** — refers to a contractual arrangement whereby the project proponent undertakes a PPP project and transfers ownership of the infrastructure facility to the implementing agency at the end of the cooperation period.
- e) **Build-Transfer-and-Operate** — refers to a contractual arrangement whereby the implementing agency contracts out the construction of an infrastructure facility to the project proponent. Once the facility is commissioned satisfactorily, ownership is transferred to the implementing agency. The project proponent, however, operates the infrastructure facility on behalf of the implementing agency.
- f) **Contract-Add-and-Operate** — refers to a contractual arrangement whereby, the project proponent adds to an existing infrastructure facility which it is renting from the government. It operates the expanded infrastructure facility over an agreed cooperation period. There may, or may not be, a transfer arrangement in regard to said facility.
- g) **Develop-Operate-and-Transfer** — refers to a contractual arrangement whereby favorable conditions external to a new PPP project which is to be built by a project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.
- h) **Joint Venture** — refers to a contractual arrangement whereby a private person or a group of private persons, and an implementing agency or a group of implementing agencies, contribute money, services, assets, or a combination of any or all of the foregoing, to undertake a PPP project, with the intention to share profits, risks and losses. Assets may include equipment, land, intellectual property or anything of value.

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

- i) **Operations and Maintenance Contract** — refers to a contractual arrangement whereby the project proponent undertakes the day-to-day operation and maintenance of an infrastructure

facility owned by the implementing agency. The project proponent shall undertake the acquisition or provision and upgrading of equipment, systems and other items related to operation and maintenance. The project proponent shall be compensated in the form of a performance-based management or service fee during the cooperation period.

- j) **Rehabilitate-Operate-and-Transfer** — refers to a contractual arrangement whereby an existing infrastructure facility is turned over to the project proponent to refurbish, improve, operate and maintain for a cooperation period, at the expiry of which the ownership of the facility is transferred to the implementing agency.
- k) **Supply-and-Operate** — refers to a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the government so requires, operates such facility. Foreign firms who are allowed to operate the facility shall provide technology transfer and training to Filipino nationals.

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

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

In undertaking a PPP project under this Act, every GOCC and its subsidiaries shall secure the approval of the head of the implementing agency to which the GOCC is attached.

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

Implementing agencies shall include in their development plans, strategies and investment programs those priority projects that may be undertaken in this Act as PPP Projects. In identifying those projects, the implementing agencies shall be guided by the following principles: effectiveness in meeting government objectives, accountability and transparency, consumer rights, affordability, public access, safety, and security.

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

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

SEC 7. Unsolicited Proposals. — Projects that are not in the list of priority projects may be considered for unsolicited proposals. Priority projects shall not be considered for unsolicited proposals, except when they involve a new concept or technology or do not have feasibility studies.

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

- a) Accept the unsolicited proposal on a negotiated basis: Provided, That the following conditions are met:
 - (1) The project does not receive VGF or direct payments from any government agency; Provided, that costs of right-of-way, resettlement and real estate taxes shall not be considered as part of the viability gap funding; and
 - (2) Guided by the principles of transparency and competitiveness, the implementing agency has invited by publication for three (3) consecutive weeks in a newspaper of general circulation, as well as websites of the PPP Center and of the implementing agency, the submission of comparative proposals and no other proposal is received for a period stated in the IRR of this Act, which period should not be less than three (3) months nor more than six (6) months from the date of last publication in a newspaper of general circulation. In the event another proponent submits a superior counter-proposal within the period referred to above and it is accepted by the appropriate Approving Body, the original proponent shall have the right to outbid.
- b) Use the unsolicited proposal as the basis for public bidding as provided in Section 10 of this Act. Upon approval by the appropriate Approving Body, the original proponent thereof shall be reimbursed of the cost incurred in the preparation of the proposal, such as the cost of any feasibility study undertaken: Provided, That such reimbursement:
 - (1) shall be in an amount specified in the IRR of this Act, but not exceeding three percent (3%) of the project cost excluding those which will be borne by the implementing agency; and
 - (2) shall be paid in full by the winning project proponent as a requirement for the award of the contract.
- c) Reject the proposal.

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

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

SEC. 8. *Approval of PPP Projects.* The approval of PPP projects under this Act shall be in accordance with the following:

- a) National PPP Projects — National PPP projects shall be approved by the NEDA Board depending on the project cost as prescribed by the PPP Governing Board. Such approval shall be carried by the implementing agency or grantor concerned.

For national projects that have impact on the region, the implementing agency shall secure the endorsement of the Regional Development Council (RDC) prior to submitting the

project for approval to the Approving Body. The RDC shall have thirty (30) days from receipt of the request of the implementing agency within which to issue its endorsement; otherwise, the same shall be deemed automatically endorsed by the RDC.

- b) Local PPP Projects — Local PPP projects shall be confirmed by the local development councils concerned and approved by the local Sanggunian.

The Approving Body shall assess all PPP projects based on its overall feasibility analysis and accord paramount importance on the affordability of user fees and efficiency in public service.

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

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

SEC. 9. *Project Development and Monitoring Facility (PDMF).* — The Project Development and Monitoring Facility is hereby created to be known as the PDMF, which shall be used for the procurement of advisory and support services related to the preparation, structuring, probity management, procurement, financial close, and monitoring of implementation of PPP projects.

- a) Funding Source — The PDMF Fund referred to under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, shall be transferred to the PDMF under this Act. The PDMF may be funded through and such amount as may be needed and included in the General Appropriations Act, Official Development Assistance or other sources.
- b) Institutional Arrangement — The PDMF shall be managed and administered by the PPP Center as a revolving fund; thus, in addition to the amounts appropriated herein, and in order to sustain the PDMF, the PPP Center may collect and receive fees and recover costs expended through PDMF in accordance with the guidelines that shall be approved by the PPP Governing Board. Such amount shall be retained and authorized to be used by the PPP Center for the purposes indicated herein.

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

To facilitate access to global best practices in PPP and enhance value for money, the selection of consultants for project preparation and transaction support, and probity advisors, all with PPP expertise, as well as independent consultants, and such other consultancy services that may be financed through PDMF shall be open to qualified consultancy firms, subject to existing laws on the practice of profession reserved to Filipino nationals.

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

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

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

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

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

SEC. 10. *Public Bidding of Projects.* — The public bidding of projects shall be in accordance with the following:

- a) Publication. — Upon approval of PPP projects as mentioned in Section 8 of this Act, the head of the implementing agency concerned shall immediately cause the publication of a notice inviting all prospective project proponents to participate in a transparent and competitive public bidding, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation and in at least one (1) local newspaper which is circulated in the region, province, city or municipality where the project will be implemented. Said notice shall also be posted continuously in the websites of the implementing agency and the PPP Center.
- b) Public Bidding. — The public bidding shall be conducted under a single or two-stage system. The pre-qualification documents, technical, and financial proposals shall be submitted in at least three (3) separate envelopes. The procedures for public bidding, which shall be transparent and competitive, including the conduct of one-on-one meetings with prequalified bidders, shall be outlined in the IRR of this Act.

- c) Award. — The contract shall be awarded to the bidder who has passed the pre-qualification stage for having satisfied the minimum financial, organizational and legal standards required by this Act, has passed the technical proposal evaluation, and has submitted the most favorable financial bid based on the parameters defined in the bid documents. Affordable user fees and efficient public services shall be of paramount importance in awarding PPP projects.

Single Complying and Responsive Bid. — In case of a single complying and responsive bidder, the implementing agency may award the PPP contract to that bidder upon its compliance with the post-award requirements under the bidding rules of the PPP project. A bid shall be considered a single complying and responsive bid submission if it falls under any of the following circumstances:

- (1) If, after advertisement, only one bidder applied for prequalification and it meets the prequalification requirements, after which it is required to submit a bid or proposal which is subsequently found by the implementing agency to be complying;
 - (2) If, after advertisement, more than one bidder applied for prequalification but only one meets the prequalification requirements, after which it submits a bid or proposal which is found by the implementing agency to be complying;
 - (3) If, after prequalification of more than one bidder, only one submits a bid which is found by the implementing agency to be complying; or
 - (4) If, after prequalification, more than one bidder submits bids but only one is found by the implementing agency to be complying.
- d) Protest. — In all stages of the procurement process, the following protest protocol and timeline shall be strictly followed:

- (1) Decisions of the PPP Prequalification Bids and Awards Committee (PPP PBAC) may be questioned by filing a motion for reconsideration within fifteen (15) working days from receipt thereof.
- (2) The decision of the PBAC on the motion for reconsideration in the immediately preceding paragraph may be further questioned by filing an appeal to the head of the implementing agency concerned and paying a non-refundable appeal fee in an amount equivalent to no less than $\frac{1}{2}$ of 1% of the project cost within fifteen (15) working days from receipt thereof.

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

- (3) The decision of the Department Secretary in the immediately preceding paragraphs of item (b) may be questioned by filing an appeal to the Office of the President within fifteen (15) working days from receipt thereof.

In no case shall any appeal taken from any decision treated in this Act stay or delay the bidding process: Provided, however, That all appeals must first be resolved before any award is made.

All government officials who fail to follow the timelines stated herein and the IRR shall be administratively and criminally charged.

- e) **Failure to Comply or Execute the Contract.** — If the winning bidder fails to comply with any post-award requirement or fails to enter into a contract with the implementing agency, the latter may proceed to negotiation with the next technically and financially qualified bidder. This is without prejudice to other legal remedies available to the implementing agency such as, but not limited to, the forfeiture of bid security, the withdrawal of Notice of Award, or both.

SEC. 11. PPP BAC. — The head of the implementing agency shall create a PPP BAC which shall be responsible for all aspects of the pre-bidding and bidding process in the case of solicited proposals, and for the comparative bidding process in the case of unsolicited proposals. The PPP BAC shall be chaired by at least a third ranking regular official of the said agency and its composition shall be specified in the IRR of this Act: Provided, That the PPP BAC constituted for National PPP Projects shall also include other relevant government agencies as may be determined in the IRR of this Act.

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

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

SEC. 13. Issuance of Administrative Franchise, License or Permit. — Upon receipt of notice that an implementing agency and a project proponent have entered in a PPP contract, the regulator or licensing authority shall automatically grant in favor of the said project proponent an administrative franchise, license, permit, or any other form of authorization required for the implementation of a PPP project subject to submission by the project proponent of the requirements by the regulator or licensing authority.

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

Such inability to act may also be a ground for administrative and/or criminal charges.

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

SEC. 15. *Contracts and Public Disclosure.* — Copies of all PPP contracts concluded under this Act shall be considered public documents. The implementing agency shall transmit to the PPP Center for records and monitoring purposes, a copy of the duly executed contract, within thirty (30) working days from its complete execution.

SEC. 16. *Prohibition on the Issuance of Temporary Restraining Orders or Injunctions.* —

- a) No temporary restraining order, preliminary injunction or preliminary mandatory injunction shall be issued by any court, except the Supreme Court, against any implementing agency, its officials or employees, or any person or entity, whether public or private acting under the government direction, to restrain, prohibit or compel the following acts:
 - (1) Bidding, rebidding or declaration of failure of bidding of PPP projects, either national or local;
 - (2) Qualification or disqualification of bidders;
 - (3) Awarding of PPP contract;
 - (4) Acceptance of any unsolicited PPP project proposal, even if not acted upon by the implementing agency concerned under Section 7 of this Act;
 - (5) Acquisition, clearance, development of the right-of-way, site or location of any PPP project;
 - (6) Construction, operation and maintenance of any PPP project;
 - (7) Commencement, execution, implementation, termination or rescission of any PPP contract; and
 - (8) Undertaking or authorization of any other lawful activity necessary for such PPP project or contract.
- b) Bond. — The applicant for such temporary restraining order, preliminary injunction or preliminary mandatory injunction shall file a bond, in an amount to be fixed by the court. The bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.
- c) Void. — Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of this section is void and of no force and effect.

- d) **Application.** — The foregoing prohibition shall apply in all disputes, cases, or controversies instituted by any and all parties, including but not limited to cases filed by bidders, implementing agencies or those claiming to have rights through such bidders or implementing agencies involving PPP project or contract.
- e) **Liability.** — In addition to civil and criminal liabilities as may be incurred under existing laws, any judge who shall issue a temporary restraining order, preliminary injunction or preliminary mandatory injunction in violation of this section, shall be subject to disciplinary action by the Supreme Court.

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

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

SEC. 19. *Investment Incentives.* — Among other incentives, all PPP projects shall be entitled to incentives as provided by the Omnibus Investment Code, upon prior endorsement of the PPP Center and registration by the project proponent with the Board of Investments.

SEC. 20. *Projects of National Significance.* — Upon certification and recommendation by the ICC, and prior consultation with the LGU concerned, the President may classify certain PPP projects under this Act as projects of national significance, which shall be entitled to the following incentives:

- a) All real properties which are actually and directly used for the project shall be exempt from any and all real property taxes levied under Republic Act No. 7160.
- b) All local taxes, fees and charges imposed by a province, city or municipality on the project proponent shall not exceed fifty percent (50%) of one percent (1%) of gross sales or receipts of the preceding calendar year.
- c) The necessary business permits, including any renewals thereof, shall be deemed to have been automatically granted or issued to the winning project proponent upon payment of the required taxes and fees to the appropriate LGU.

For a project to qualify as a project of national significance, it shall meet the following criteria:

- a) The total project cost falls within the threshold set by the ICC;
- b) The project has direct and indirect economic impact which shall not be less than the threshold set by the ICC;
- c) The project will have direct and indirect economic impact beyond the LGU where it is located; and

- d) The project can create new jobs.

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

SEC. 22. *Institutionalization of PPP Center.* — To achieve the goals of this Act, the PPP Center created under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, is hereby institutionalized.

- a) Functions: The PPP Center is hereby authorized to adopt its current organizational structure, absorb its existing employees, and upgrade its human resource component, as may be necessary, towards a more efficient and effective performance of the following functions:
- (1) Assist implementing agencies in identifying, developing, prioritizing and maintaining a pipeline of PPP projects;
 - (2) Provide advisory services, technical assistance, trainings, and capacity development to implementing agencies in all PPP-related matters;
 - (3) Manage and administer the PDMF as provided in Section 9 of this Act;
 - (4) Work with implementing agencies in setting procurement and implementation timelines for approved PPP projects;
 - (5) Recommend plans, policies and implementation guidelines related to PPP, in consultation with appropriate oversight committees or agencies, implementing agencies, private sector and other relevant stakeholders;
 - (6) Facilitate, monitor, and evaluate the implementation of PPP programs and projects developed by the implementing agencies;
 - (7) Report to the Office of the President and Congress on the implementation of the PPP programs and projects of the government at the end of each year;
 - (8) Serve as a link between the government and the private sector;
 - (9) Promote and market PPP programs and projects, in collaboration with other government promotion agencies;
 - (10) Issue non-binding and non-policy advisory opinions relating solely to technical aspects of PPP;
 - (11) Serve as the central repository of all executed PPP contracts and any subsequent amendment or supplement thereto, including settlement agreements, entered into by implementing agencies;

- (12) Provide and transmit copies of duly executed PPP contracts to Congress;
 - (13) Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC insofar as PPP projects are concerned;
 - (14) Maintain an integrated projects' bank to serve as an interactive database of all current and past projects;
 - (15) Sit as member of the NEDA-Infrastructure Committee (INFRACOM), ICC, and other interagency bodies where a PPP project is a major concern;
 - (16) Provide and transmit copies of duly executed PPP contracts to Congress; and
 - (17) Such other functions as may be necessary to achieve the objectives and purposes of this Act.
- b) **Positions and Compensation:** All positions of the PPP Center shall be governed by a compensation and position classification system and qualification standards duly approved by the Governance Commission for Government-Owned or Controlled Corporations (GCG) and subject to its periodic review.

The PPP Center shall report directly to the PPP Governing Board and under the administrative supervision of the NEDA.

The PPP Center shall be headed by an Executive Director with the rank equivalent to an Undersecretary, who shall be appointed by the President of the Philippines, for a term of 6 years, upon recommendation of the PPP Governing Board.

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

The Board shall be composed of the following:

- a) Secretary of Socio-economic Planning as Chairperson;
- b) Secretary of Finance as Vice-Chairperson;
- c) Secretary of Budget and Management;
- d) Secretary of Public Works and Highways;
- e) Secretary of Transportation;
- f) Secretary of Communication;
- g) Secretary of Trade and Industry;

- h) Secretary of Interior and Local Government;
- i) One (1) private sector representative from the field of architecture or urban planning, elected by the Philippine Institute of Architects/United Architects of the Philippines/Philippine Institute of Environmental Planners/Intelligent Community Forum Philippines;
- j) One (1) private sector representative from the construction industry, elected by the Philippine Constructors Association (PCA);
- k) One (1) private sector representative from the business sector, elected by the Management Association of the Philippines (MAP); and
- l) One (1) private sector representative from the finance industry, elected by the Bankers Association of the Philippines (BAP).

The principal members of the Board may designate their respective alternates, with a rank not lower than assistant secretary or its equivalent, and whose acts shall be considered the acts of their principals.

The presence of the Chairperson with six (6) other members of the Board shall constitute a quorum and a majority vote of the members present shall be necessary for the adoption of any issuance, order, resolution, decision or other act of the Board in the exercise of its functions. The Board shall act as a collegial body. In the conduct of meetings, the Chairperson shall not vote except to break a tie.

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

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

SEC. 24. Mandatory Inclusion of Alternative Dispute Resolution (ADR) Mechanisms in PPP Contracts. — All PPP contracts shall include provisions on the use of ADR mechanisms. The contracting parties shall be given complete freedom to choose which venue and forum shall govern their dispute, as well as the rules or procedures to be followed in resolving the same.

SEC. 25. Creation of a PPP Contingent Liability Fund. — To ensure fiscal sustainability and negotiate better financing terms of PPP projects, there is hereby created a PPP Contingent Liability Fund to be used for the payment of contingent liabilities arising from PPPs in accordance to its contract terms.

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

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

- a) Concession fees;
- b) Implementing agency reimbursements;
- c) Interest earnings from the contingent liability fund; and
- d) National Government contributions.

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

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

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

Further, to foster accountability and efficiency in implementing PPP projects, it is mandatory for implementing agencies to enter into a recourse agreement with the DOF before any payment can be drawn from the PPP Contingent Liability Fund for 8 contingent liabilities that have materialized within contract terms.

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

SEC. 26. Penal Provision. — Any person, whether private individual or public officer or employee, who commits any of the acts hereunder proscribed, shall be punished by imprisonment from a minimum of four (4) years to a maximum of twelve (12) years and one (1) day:

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

SEC. 27. Miscellaneous Provisions. —

- a) **Safeguard Mechanisms to Protect Public Interest.** — In order to improve transparency and to promote bankability and social acceptability of PPP projects, the following mechanisms shall be observed:

- (1) Whenever applicable, the implementing agency shall assess the affordability of fee or tariff, and conduct a willingness-to-pay survey among the users of the infrastructure facility;
 - (2) The implementing agency shall conduct public consultation or dialogue with all potential stakeholders, including the users, in all stages of the PPP project; and
 - (3) The implementing agency and the PPP Center shall post in their respective websites the approved starting fare or user fee in a PPP project as well as the approved parametric formula on fare increases or adjustments, if applicable.
- b) **Build-and-Transfer and Social Infrastructure PPP Projects.** — For PPP projects under the Build-and-Transfer scheme, as well as social infrastructure PPP projects, Congress shall include the necessary appropriations to meet the financial obligations arising from such projects on the fiscal year when the obligation becomes due and demandable. Such appropriations shall be over and above the annual budget of the implementing agency.
- c) **Joint Venture Agreements.** — For joint venture arrangements, the ownership of the infrastructure facility may be transferred to either the implementing agency or to the project proponent: Provided, that in the latter case, the transfer shall be made under competitive market conditions.
- d) **Recovery of Investment.** — As may be agreed in the PPP contract, the project proponent may be allowed to collect tolls, fees, rentals, or charges, engage in commercial development, receive viability gap funding, and receive direct government payments, among others, to recover investment.
- e) **Wind-up and Transfer Measures.** — The PPP contract shall provide, as appropriate, for:
- (1) Mechanisms and procedures for the transfer of assets to the implementing agency;
 - (2) The compensation to which the project proponent may be entitled in respect of assets transferred to the implementing agency, or to a successor, or purchased by the implementing agency;
 - (3) The transfer of technology required for the operation of the infrastructure facility;
 - (4) The training of the implementing agency's personnel or of a successor in the operation and maintenance of the infrastructure facility; and
 - (5) The provision, by the project proponent, of a warranty that the infrastructure facility meets the project technical specifications, agreed system features, and performance standards and services for a certain period as may be defined in the IRR of this Act after the transfer of the infrastructure facility to the implementing agency or to a successor.
- f) **Prescription.** — No one shall in any proceedings before any court or tribunal allege the invalidity of any PPP contract on the ground of non-compliance with the provisions of this Act or its IRR after a period of one (1) year has elapsed from the signing of the PPP contract.

- g) **Operation.** — The person, whether or not the project proponent, that shall actually operate and maintain the infrastructure facility, including but not limited to the collection of tolls, fees, rentals or charges from users of the infrastructure facility, must be registered with the Securities and Exchange Commission.
- h) **Preferential Hiring of Filipino Workers.** — For the construction stage of infrastructure facilities where the contractor is a foreigner, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available.
- i) **Contracts, Procedures, and Authority Not Affected by this Act.** — This Act shall not affect:
 - (1) PPP contracts already entered into, and selection procedures undertaken, by implementing agencies prior to the effectivity of this Act in accordance with relevant laws, regulations, guidelines, and ordinances, provided that Section 16 of this Act shall apply to all pending PPP Projects upon the effectivity of this Act; and
 - (2) The authority of LGUs to enact their own PPP ordinances that are not inconsistent with this Act and its IRR.

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

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

SEC. 29. *Joint Oversight Committee.* — There is hereby created a Joint Congressional Oversight Committee to oversee the implementation of this Act. The Committee shall be composed of the Chairmen of the Senate Committees on Public Works, on Finance, and on Economic Affairs, and the Chairmen of the House Committees on Public Works and Highways, on Appropriations, and on Economic Affairs. To effectively monitor the implementation of this Act, the Philippine Development Plan (PDP) and the priority list of national and local projects shall be submitted to the Joint Congressional Oversight Committee.

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

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

SEC. 31. *Separability Clause.* — If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation.

SEC. 32. *Repealing Clause.* — Republic Act No. 7718, Republic Act No. 6957, Sec. 3(a) of Presidential Decree (PD) No. 1 112, Section 2 of PD No. 1894, and Executive Order (EO) No. 08 (s. 2010) as amended by EO 136 (s. 2013), EO 78 (s. 2012), Section 8 of EO No. 423 (s. 2005), 2013 Revised Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities, Joint Venture Guidelines issued by LGUs, and PPP Codes issued by LGUs, are hereby repealed. All other laws, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 33. *Effectivity.* — This Act shall take effect fifteen (15) days from the date of publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,