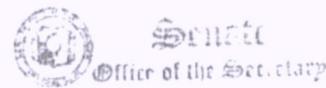


EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE

'19 JUL -2 P1:55

S.B. No. 190

RECEIVED BY JF

INTRODUCED BY: SENATOR EMMANUEL D. PACQUIAO

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

EXPLANATORY NOTE

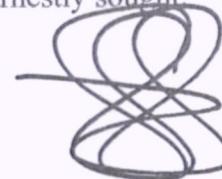
The World Bank in its January 2018 Global Economic Prospects reports that the Philippines is expected to sustain robust economic growth in the next three years. The Washington-based multilateral lender adds that the country will continue to be the fastest-growing economy in the Association of Southeast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

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

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

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

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



EMMANUEL D. PACQUIAO

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

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

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

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

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

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

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

23
24

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

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

- 5 (i) *Build-and-Transfer (BT)* – A contractual arrangement whereby the
6 Private Sector Proponent (PSP) undertakes the financing and
7 construction of a given infrastructure or development facility, and after
8 its completion, turns it over to the implementing agency which shall, in
9 turn, pay the PSP, on an agreed schedule, its total investment expended
10 on the project, plus a Reasonable Rate of Return thereon.
- 11 (ii) *Build-Lease-and-Transfer (BLT)* – A contractual arrangement whereby
12 a PSP is authorized to finance and construct an infrastructure or
13 development facility and upon its completion, turns it over to the
14 implementing agency on a lease arrangement for a fixed period, after
15 which ownership of the facility is automatically transferred to the latter.
- 16 (iii) *Build-Operate-and-Transfer (BOT)* – A contractual arrangement
17 whereby the PSP undertakes the construction, including financing, of a
18 given infrastructure or development facility, and the operation and
19 maintenance thereof. The PSP operates the facility over a fixed term,
20 during which it is allowed to charge facility users appropriate tolls, fees,
21 rentals, and charges not exceeding those proposed in its bid, or as
22 negotiated and incorporated in the contract, to enable the PSP to recover
23 its investment, and its operating and maintenance expenses in the
24 project. The PSP transfers the facility to the implementing agency at the
25 end of the fixed term, which shall not exceed fifty (50) years.
- 26 (iv) *Build-Own-and-Operate (BOO)* – A contractual arrangement whereby
27 a PSP is authorized to finance, construct, own, operate and maintain an
28 infrastructure or development facility from which the PSP is allowed to
29 recover its total investment, operating and maintenance costs plus a
30 reasonable return thereon by collecting tolls, fees, rentals or other
31 charges from facility users. Under this project, the proponent who owns
32 the assets of the facility may assign its operation and maintenance to a
33 facility operator.
- 34 (v) *Build-Transfer-and-Operate (BTO)* – A contractual arrangement
35 whereby the implementing agency contracts out the construction of an
36 infrastructure or development facility to a PSP such that the contractor
37 builds the facility on a turnkey basis, assuming cost overruns, delays,
38 and specified performance risks. Once the facility is commissioned

1 satisfactorily, title is transferred to the implementing agency; however,
2 the operation thereof is retained by the PSP for a specified period of time
3 which shall not exceed fifty (50) years.

- 4
- 5 (vi) *Concession* – A contractual arrangement whereby the financing and
6 construction of a new infrastructure or development facility and/ or
7 rehabilitation of an existing facility is undertaken by the PSP after
8 turnover thereof to it, and includes the operation, maintenance,
9 management and improvement, if any, of the facility for a fixed term
10 during which the PSP generally provides service directly to facility users
11 and is allowed to charge and collect the approved tolls, fees, tariffs,
12 rentals or charges from them. The implementing agency may receive a
13 concession or franchise fee during the term of the contract and/ or other
14 consideration for the transfer, operation or use of any facility. There may
15 be a transfer of ownership of the asset or facility after the concession
16 period has ended subject to rules of the COA.
- 17
- 18 (vii) *Contract-Add-and-Operate (CAO)* – A contractual arrangement
19 whereby the PSP adds to an existing infrastructure or development
20 facility which it is leasing from the implementing agency and operates
21 the expanded project over an agreed franchise period. There may or may
22 not be a transfer arrangement with regard to the added facility provided
23 by the PSP.
- 24
- 25 (viii) *Develop-Operate-and-Transfer (DOT)* – A contractual arrangement
26 whereby favorable conditions external to a new infrastructure or
27 development facility to be built by a PSP are integrated into the
28 arrangement by giving that entity the right to develop adjoining
29 property, and thus, enjoy some of the benefits the investment creates,
30 such as higher property or rent values.
- 31
- 32 (ix) *Divestment or Disposition* – The transaction which takes away,
33 deprives, withdraws the title to a property owned by the implementing
34 agency and vesting ownership thereof to a PSP.
- 35
- 36 (x) *Joint Venture (JV)* – A contractual arrangement whereby a PSP or a
37 group of private sector entities on one hand, and the implementing
38 agency on the other hand, contribute money/ capital, services, assets
39 (including equipment, land, intellectual property or anything of value),
40 or a combination of any or all of the foregoing. The implementing
41 agency shall be a majority equity or shareholder while the PSP shall be
42 minority equity or shareholder. Each party shall be entitled to dividends,
43 income and revenues and will bear the corresponding losses and
44 obligations in proportion to its share. Parties to a JV share risks to jointly

1 undertake an investment activity in order to accomplish a specific,
2 limited or special goal or purpose with the end view of facilitating
3 private sector initiative in a particular industry or sector, and eventually
4 transferring ownership of the investment activity to the PSP under
5 competitive market conditions. It involves a community or pooling of
6 interests in the performance of the service, function, business or activity,
7 with each party having a right to direct and govern the policy in
8 connection therewith, and with a view of sharing both profits and losses,
9 subject to agreement by the parties.

- 10
- 11 (xi) *Lease or Affermage* – A contractual arrangement providing for
12 operation, maintenance, and management services by the PSP, including
13 working capital and/ or improvements to an existing infrastructure or
14 development facility leased by the PSP from the implementing agency
15 for a fixed term. Under a lease, the PSP retains revenue collected from
16 customers and makes a specified lease payment to the implementing
17 agency. Under an affermage, the parties share revenue from customers
18 wherein the PSP pays the contracting authority an affermage fee, which
19 varies according to demand and customer tariffs, and retains the
20 remaining revenue. The implementing agency may provide a purchase
21 option at the end of the lease period.
- 22
- 23 (xii) *Management Contract* – A contractual arrangement involving the
24 management or provision by the PSP of operation and maintenance or
25 related services to an existing infrastructure or development facility
26 owned or operated by the implementing agency. The project proponent
27 may collect tolls/ fees/ rentals and charges which shall be turned over to
28 the implementing agency and shall be compensated in the form of a
29 fixed fee and/ or performance based management or service fee during
30 the contract term.
- 31
- 32 (xiii) *Rehabilitate-Operate-and-Transfer (ROT)* – A contractual arrangement
33 whereby an existing facility is turned over to the PSP to refurbish,
34 operate and maintain for a franchise period, at the expiry of which the
35 legal title to the facility is turned over to the implementing agency.
- 36
- 37 (xiv) *Rehabilitate-Own-and-Operate (ROO)* – A contractual arrangement
38 whereby an existing facility is turned over to the PSP to refurbish and
39 operate, with no time limitation imposed on ownership. As long as the
40 operator is not in violation of its franchise, it can continue to operate the
41 facility in perpetuity.
- 42
- 43 (xv) *Service Contract* – A contractual arrangement whereby the PSP shall
44 provide a particular service to the implementing agency involving the

1 latter's proprietary authority or to entities or corporation created by the
2 implementing agency. The PSP shall be entitled to be paid a fee per unit
3 of work done during the term of the contract.
4

5 (xvi) *Supply-and-Operate (SO)* – A contractual arrangement rider in any P4
6 Contract whereby the supplier of equipment and machinery for a given
7 infrastructure or development facility, if the interest of the implementing
8 agency so requires, operates the facility, providing, in the process,
9 technology transfer and training to Filipino nationals.
10
11

12 (b) *Cost Sharing* – This shall refer to the implementing agency's portion of capital expenses
13 associated with the establishment of an infrastructure or development facility such as the
14 provision of access infrastructure, right-of-way, and any partial financing of the project.
15

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

29 (d) *Competitive Challenge or Swiss Challenge* – An alternative selection process wherein third
30 parties or challengers shall be invited to submit comparative proposals on the financial
31 aspect to an unsolicited proposal. Accordingly, the PSP who submitted the unsolicited
32 proposal, or the original proponent, is accorded the right to match any superior offers given
33 by a comparative PSP.
34

35 (e) *Competitive Selection or Bidding or Open Competition* – Refers to a method of selection
36 or procurement initiated and solicited by the implementing agency based on a transparent
37 criteria, which is open to participation by any interested party.
38

39 (f) *Direct State Equity* – Refers to the subscription by the implementing agency of shares of
40 stock or other securities convertible to shares of stock of the special purpose vehicle or
41 single-purpose project company, whether such subscription will be paid by money or
42 assets.
43

1 (g) *Direct State Guarantee* – Refers to an agreement whereby the implementing agency
2 guarantees to assume responsibility for the repayment of debt directly incurred by the PSP
3 in implementing the project in case of a loan default.

4
5 (h) *Direct State Subsidy* – Refers to an agreement whereby the implementing agency shall:
6 (a) defray, pay or shoulder a portion of the P4 project cost or the expenses and costs in
7 operating and maintaining the project; (b) condone or postpone any payments due from the
8 PSP; (c) contribute any property or assets to the project; (d) waive or grant special rates on
9 real property taxes on the project during the term of the contractual arrangement; and/ or
10 (e) waive charges or fees relative to the business permits or licenses that are to be obtained
11 for the construction of the project, all without receiving payment or value from the PSP or
12 operator for such payment, contribution or support.

13
14 (i) *Franchise, License or Permit* – refers to the right or privilege affected with public interest
15 which is conferred upon a PSP, under such terms and conditions as the implementing
16 agency and/or regulator, license or permit authority may impose, in the interest of public
17 welfare, security and safety.

18
19 (j) *Hybrid P4* – refers to a combination of government procurement under Republic Act No.
20 9184 and P4, either simultaneously or sequentially undertaken or implemented with each
21 other.

22
23 (k) *Infrastructure and/or Development Facility* – Projects normally financed and operated, or
24 regulated by the implementing agency but which will now be wholly or partly financed,
25 constructed and operated by the PSP; projects that will advance and promote the general
26 welfare; and other infrastructure and development projects as may be authorized by the
27 implementing agency.

28
29 These projects include but are not limited to, energy and power, renewable energy, waste-
30 to-energy, roads, bridges, causeways, waterways, highways, ports, wharfs, terminals,
31 airports, community airports, canals, dams, desilting, dredging, mining and exploration,
32 hydropower projects, water supply and distribution, sewerage, irrigation, drainage, water
33 conservation such as impoundment areas and rainwater harvesting, telecommunications,
34 railroad and railways, short-haul transit services such as monorail, guided bus, bus services
35 and trams, intermodal and multi-modal transit systems, transport systems, traffic control
36 and management, parking facilities, reclamation projects, platform settlements, industrial
37 estates or townships, central business and industrial park development, hotels and resorts,
38 socialized housing, non-conventional low-cost housing, settlement/ resettlement and
39 relocation facilities, residential subdivisions, parks and open space development/
40 redevelopment, pocket parks, public art, libraries, heritage conservation, government
41 buildings, sustainable/ green public buildings, sports facilities, wellness establishments,
42 tourism such eco-tourism, wellness tourism and agri/agro-tourism, public markets,
43 commercial buildings, slaughterhouses, storage buildings, warehouses, cold storage, solid
44 waste management, sanitary landfills, meeting and convention centers, information

1 technology networks and database infrastructure, education-related, classrooms, health
2 facilities, hospitals, social services-related, prisons, agriculture-related, post-harvest
3 facilities, environmental management and protection, climate change adaption, disaster risk
4 reduction, among other developmental projects. The projects may be undertaken or
5 implemented singly or with other related components.

6

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

15

16 (m) *Negotiated Projects* – Refer to instances where the desired project is the result of an
17 unsolicited proposal from a PSP or, where the implementing agency has failed to identify
18 an eligible private sector partner for a desired P4 activity when there is only one qualified
19 bidder after subjecting the same to a competitive selection or bidding.

20

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

27

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

34

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

39 P4 is a form of legally enforceable contract between the implementing agency and a PSP,
40 requiring new investments from the PSP and transferring key risks to the PSP in which
41 payments are made in exchange for performance, for the purpose of delivering a service
42 provided or intended to be provided by the implementing agency. P4 shall also include
43 dispositions of an asset, facility, project owned, or entity created by the implementing
44 agency to a PSP; procurement of a service; assumption by a PSP of a proprietary function

1 of the implementing agency; grant of a concession or franchise to a PSP by the
2 implementing agency; or usage by the PSP of public property owned or possessed by the
3 implementing agency.

4

5

6 (q) *P4 Contract* – Refers to the duly executed agreement between an implementing agency and
7 PSP over an awarded P4 program or project.

8

9 (r) *P4 Program or Project* – Refers to an infrastructure or development facility undertaken
10 pursuant to this Act.

11

12 (s) *P4 Regulatory Authority* – refers to the entity authorized, as detailed in Section 11 hereof,
13 to approve P4 programs or projects proposed pursuant to this Act.

14

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

20

21 (u) *Unsolicited Proposal* – Refers to project proposals submitted by a PSP to the implementing
22 agency to undertake an infrastructure or development facility or project, whether priority
23 or not, without a formal solicitation issued by the implementing agency.

24

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

32

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

38

39

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

1
2 (b) The PPP Center, created under Executive Order No. 8, s. of 2010, shall henceforth
3 be known as the P4 Center.
4
5

6 **Section 5. Purposes of the P4 Center.** – The P4 Center is hereby created for the following
7 purposes:
8

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

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

- 20 a) Render assistance to implementing agencies in identifying, developing,
21 prioritizing and maintaining P4 programs and projects;
22 b) Conduct P4 programs and project facilitations to aid implementing
23 agencies in addressing impediments or delays in the implementation of
24 P4 programs and projects;
25 c) Provide advisory services, technical assistance, trainings and capacity
26 development to implementing agencies in P4 project preparation and
27 development;
28 d) Manage and administer the P4-PDMF Fund;
29 e) Serve as the Secretariat for the P4 PDMF Fund Committee;
30 f) Assist implementing agencies in setting procurement and
31 implementation timelines and guidelines for approved P4 programs and
32 projects;
33 g) Recommend plans and policies related to P4 programs and projects in
34 consultation with appropriate oversight committees, implementing
35 agencies and the private sectors;
36 h) Monitor, facilitate and evaluate the implementation of the P4 programs
37 and projects of formulated by implementing agencies;
38 i) Collect, receive fees and recover costs expended in the exercise of its
39 powers and functions;
40 j) Establish and manage a central database system of P4 programs and
41 projects;
42 k) Recommend improvements to timelines in processing P4 programs and
43 project proposals, and monitor compliance of all implementing
44 agencies;

- 1 l) Prepare reports on the implementation of the P4 programs and projects
2 of the government for submission to the President at the end of each
3 year;
- 4 m) Serve as the central repository of all executed P4 contracts and any
5 subsequent amendment or supplement thereto, including compromise
6 and/or settlement agreements, entered into by the implementing agency;
- 7 n) Shall act as the Secretariat of the P4 Governing Board; and,
- 8 o) Perform such other functions which may be critical in expediting and
9 effectively implementing the P4 programs and projects of the
10 Government or necessary to achieve the objectives and purposes of this
11 Act.

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

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

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

19 (c) The principal members of the P4 Governing Board may designate their
20 respective alternates who shall be the officials next in rank to them. The acts of the alternates
21 shall be considered as the act of the principal.

22 (d) The Chairperson and five (5) other members of the P4 Governing Board shall
23 constitute a quorum and a majority vote of the members present shall be necessary for the
24 adoption of any issuance, order, resolution, decision or other act of the Board in the exercise
25 of its functions.

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

1 **Section 8. Duties and Responsibilities of the Executive Director.** – The Executive Director
2 shall have the following duties and responsibilities:

- 4 (a) To act as Chief Executive of the P4 Center;
- 5 (b) To execute, administer and implement the policies and measures
6 approved by the P4 Governing Board;
- 7 (c) To direct and supervise the day-to-day operations and administration of
8 the P4 Center;
- 9 (d) To represent the P4 Center in all dealings with offices, agencies and
10 instrumentalities of the government and with all persons and other
11 entities, public or private, domestic or foreign;
- 12 (e) To prepare the agenda for the meetings of the P4 Governing Board, and
13 to submit for the consideration of the P4 Governing Board such policies
14 and measures as s/he believes is necessary to carry out the purposes and
15 objectives of this Act; and,
- 16 (f) To exercise such other powers and perform such other duties provided
17 in the by-laws and as may be vested in him by the P4 Governing Board.

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

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

31 **Section 9. P4 PDMF Fund Committee.** – (a) A P4 PDMF Fund Committee is hereby created
32 which shall approve applications for P4 PDMF Fund support submitted by implementing
33 agencies, GOCCs or LGUs.

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

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

1 **Section 10. Authority of Implementing Agencies.** – Implementing agencies are hereby
2 authorized to undertake P4 programs and projects with any PSP provided, however, that the
3 same must be in accordance with their respective charters and this Act.
4

5 **Section 11. Approval of P4 Programs or Projects.** – P4 programs or projects shall be subject
6 to the approval of the following P4 Regulatory Authorities:
7

- 8 (a) P4 programs or projects, the total cost of which exceed **ONE BILLION**
9 **PESOS (Php 1,000,000,000.00)**, shall be approved by the NEDA –
10 Investment Coordination Committee (NEDA – ICC); and,
- 11 (b) P4 programs or projects, the total cost of which does not exceed **ONE**
12 **BILLION PESOS (Php 1,000,000,000.00)**, shall be approved by the
13 implementing agency's supervising agency, governing board or local
14 legislative council, as the case may be.
15

16

17 **Section 12. Priority P4 Programs or Projects.** – Implementing agencies shall, within ninety
18 (90) days from the effectivity of this Act and every three (3) years thereafter, identify priority
19 P4 programs or projects and submit the same to the P4 Center for information, coordination,
20 evaluation and monitoring purposes. Identified priority P4 programs or projects should be
21 consistent with the Philippine Development Plan.
22

23 **Section 13. Unsolicited Proposals.** – (a) Unsolicited proposals may be submitted for any
24 project, priority or otherwise.
25

26 (b) The implementing agency may either reject the unsolicited proposal, use the
27 same as the basis of a public bidding pursuant to Section 14 hereof, or accept the unsolicited
28 proposal on a negotiated basis.
29

30 (c) In accepting an unsolicited proposal on a negotiated basis, the implementing
31 agency shall subject the unsolicited proposal to a competitive challenge or Swiss challenge;
32 provided, however, that the unsolicited proposal meets the following conditions:
33

- 34 (i) The P4 program or project does not receive VGF or any other form of
35 payment, direct state equity, direct state subsidy, or direct state
36 guarantee from any government agency, instrumentality, or unit.
37
- 38 (ii) The implementing agency shall publish for three (3) consecutive weeks
39 in a newspaper of general circulation, as well as in the website of the P4
40 Center and the implementing agency, an invitation for the submission of
41 comparative proposals.
42

43 If no comparative proposal is received within six (6) months from the
44 date of last publication in a newspaper of general circulation, and

1 provided that the unsolicited proposal is compliant and in accordance
2 with all applicable laws, rules and regulations pertinent to the proposed
3 infrastructure or development facility, the implementing agency may
4 accept the unsolicited proposal and refer the same to the proper P4
5 Regulatory Authority for approval.

6
7 If the implementing agency receives a comparative proposal within the
8 period referred above that is more advantageous to the government, the
9 PSP who submitted the unsolicited proposal shall have the right to match
10 any superior offers given by a comparative PSP.
11
12

13 **Section 14. Competitive Selection or Bidding or Open Competition of Priority P4 Programs**
14 *or Projects.* – (a) Upon approval of the P4 program or project by the appropriate P4 Regulatory
15 Authority, the implementing agency shall immediately cause the publication of an *Invitation*
16 *to Bid*, once every week for three (3) consecutive weeks, in at least two (2) newspapers of
17 general circulation and in at least one (1) local newspaper which is circulated in the region,
18 province, city or municipality where the P4 program or project will be implemented, inviting
19 all prospective project proponents to participate in a transparent and competitive public
20 bidding. Said invitation shall also be posted continuously in the websites of the implementing
21 agency and the P4 Center.

22
23 (b) The public bidding shall be conducted under a two-stage-two-envelope system,
24 the procedure and details of which shall be outline in the implementing rules and regulations
25 (IRR) of this Act.
26

27 (c) The P4 program or project, and its resulting contract, shall be awarded to the
28 bidder who has passed the pre-qualification stage for having satisfied the minimum financial,
29 organizational and legal standards as set forth in the IRR of this Act, has passed the technical
30 proposal evaluation, and has submitted the most favorable financial bid based on the
31 parameters defined in the bid documents.
32

33 (d) In case of a sole complying and/or responsive bidder, the implementing agency
34 may award the P4 program or project, and its resulting contract, to that bidder upon its
35 compliance with the post-award requirements as set forth in the IRR of this Act.
36
37

38 **Section 15. Direct Negotiations.** – Direct negotiation shall be resorted to when there is only
39 one complying bidder left as defined hereunder:
40

41 (a) If, after advertisement, only one contractor applies for prequalification
42 and it meets the prequalification requirements, after which it is required
43 to submit a bid/proposal which is subsequently found by the
44 implementing agency to be complying.

- (b) If, after advertisement, more than one contractor applied for prequalification but only one meets the prequalification requirements, after which it submits bid/proposal which is found by the implementing agency to be complying.
 - (c) If, after prequalification of more than one contractor, only one submits a bid which is found by the implementing agency to be complying.
 - (d) If, after prequalification, more than one contractor submit bids but only one is found by the implementing agency to be complying: Provided, That any of the disqualified prospective bidder may appeal the decision of the implementing agency's Pre-qualification Bids and Awards Committee within fifteen (15) working days to the head of the agency, in case of P4 programs or projects by government agencies or GOCCs; to the Department of the Interior and Local Government (DILG), in case of P4 programs or projects by LGUs from the date the disqualification was made known to the disqualified bidder: Provided, furthermore, That the implementing agency concerned or DILG should act on the appeal within forty-five (45) working days from receipt thereof.

Section 16. Grant of Administrative Franchise, License or Permit. – (a) If the implementing agency is likewise the regulator, licensing or permit authority concerned, it shall, within thirty (30) days from the execution of a P4 Contract, issue or grant in favour of the PSP the necessary administrative franchise, license or permit required and necessary for the implementation of the P4 program or project. If the P4 contract contains a concession provision or if a concession is contained in a separate agreement, said contract or agreement constitutes the grant of administrative franchise, license or permit.

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

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

1 **Section 16. Expansion or Extension of an Existing Infrastructure or Development Facility. P4**
2 *Contract Amendment.* – Subject to conditions specified in the IRR of this Act, and upon prior
3 approval by the appropriate P4 Regulatory Authority, the PSP of an existing infrastructure or
4 development facility may be expand or extend the same even without further bidding;
5 Provided, however, that the cost of the expansion or extension shall not exceed twenty-five
6 percent (25%) of the price-adjusted original project cost; and, provided, further, that any
7 subsequent expansion or extension shall no longer be allowed.
8

9 **Section 17. Contract Amendment and Termination.** – (a) A PPP contract may be modified or
10 amended, in form or in substance, after the contract has been signed by the parties, provided,
11 that the terms of reference or tender documents of the competitive selection or challenge,
12 including the draft P4 contract, contains the right to amend.
13

14 (b) In the event that a P4 Contract is revoked, cancelled or terminated by the
15 implementing agency through no fault of the PSP or by mutual agreement, the implementing
16 agency shall compensate the PSP for actual expenses incurred in the P4 program or project
17 plus a reasonable rate of return thereon not exceeding that stated in the contract as of the date
18 of such revocation, cancellation or termination: Provided, That the interest of the implementing
19 agency in these instances shall be duly insured with the Government Service Insurance System
20 (GSIS) or any other insurance entity duly accredited by the Office of the Insurance
21 Commissioner: Provided, finally, That the cost of the insurance coverage shall be included in
22 the terms and conditions of the bidding referred to above.
23

24 (c) In the event that the implementing agency defaults on certain major obligations in
25 the contract and such failure is not remediable or if remediable shall remain unremedied for an
26 unreasonable length of time, the PSP may, by prior notice, terminate the contract. The PSP
27 shall be reasonably compensated by the implementing agency of equivalent or proportionate
28 contract cost as defined in the contract.
29

30 (d) Only the courts can declare a P4 contract and award illegal and unlawful.
31
32

33 **Section 18. Prohibition on the Issuance of Temporary Restraining Orders or Injunctions.** – No
34 court, except the Supreme Court, shall issue any temporary restraining order, preliminary
35 injunction or preliminary mandatory injunction against the implementing agency, officials or
36 any person or entity, whether public or private acting under the implementing agency's
37 direction, to restrain, prohibit or compel the following acts:
38

- 39 (a) Acquisition, clearance and development of the right-of-way and/or site
40 or location of any P4 program or project;
41
42 (b) Bidding or awarding of P4 program or project and P4 Contract;
43

- (c) Commencement, execution, implementation, operation of any P4 program or project and P4 Contract;
 - (d) Termination or rescission of any P4 program or project and P4 Contract; and,
 - (e) The undertaking or authorization of any other lawful activity necessary for P4 program or project and P4 Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved.