

Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

Second Regular Session

House Bill No. 5002



Introduced by **Representative JOEY SARTE SALCEDA**

EXPLANATORY NOTE

The Philippines stands out as one of the few developing countries that has created an explicit legal and regulatory frame work for Build-Operate-and-Transfer (BOT) projects. The policy toward private sector participation in infrastructure was originally prompted by a looming power crisis in the late 1980s and early 1990s. Executive Order No. 215, Series of 1987 abolished the monopoly of the National Power Corporation and provided incentives for private investors to enter the power sector, which was experiencing massive shortfalls in generating capacity.

In 1990, the Philippine Congress enacted the first BOT law in Asia, Republic Act No. 6957. In 1994, Congress enacted Republic Act No. 7718, which amended RA 6957, by increasing the number of variants of BOT contractual arrangements. Section 12 of the Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the BOT Law, provides that the Coordinating Council for the Philippine Assistance Program (now the BOT Center) shall be responsible for the coordination and monitoring of the implementation of all BOT projects.

Since then, the BOT law has significantly increased private investment in infrastructure in the Philippines by expanding private sector participation in infrastructure development in sectors other than power, including ports, toll roads, airports, and water utilities, preventing the use of explicit government guarantees, and limiting the use of public funds so that no more than 50 percent of the total project cost can come through government financial institutions.

The current drive towards private sector participation and competition in infrastructure sectors has been driven by general factors, such as high indebtedness and stringent budget constraints limiting the public sector's ability to

50 meet increasing infrastructure needs; the expansion of international and local
51 capital markets, with a consequent improvement in access to private funding.
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54 In the present Philippine economic environment, where the reality is that
55 the only feasible way for most infrastructure to be built is through BOT, privately
56 financed infrastructure projects are an important tool in meeting national
57 infrastructure needs. The immediacy and imperative need for BOT as a tool to
58 make our economy grow has been emphasized by President Gloria Macapagal-
59 Arroyo, herself one of the authors of the BOT Law, in her State of the Nation
60 Addresses.

61 The Medium-Term Philippine Development Plan highlights BOT as a key
62 policy with which to achieve the country's economic development and growth
63 targets. Essential elements of national policies in BOT that investors look at
64 include the level of competition sought for each infrastructure sector, the way in
65 which each sector is structured and the mechanisms used to ensure adequate
66 functioning of infrastructure markets.
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69 Points of concern to the public sector include such matters as continuity in
70 the provision of public services; adherence to environmental protection, health,
71 safety and quality standards; fairness of prices charged to the public; and the
72 flexibility to meet changed conditions, including expansion of the service to meet
73 additional demand. Points of concern to the private sector in BOT projects
74 include transparency of laws and regulations and predictability and impartiality in
75 their application; assurances that private property is respected and not interfered
76 with other than for reasons of public interest and only if compensation is paid;
77 and freedom of the parties to agree on commercial terms that ensure a
78 reasonable return on invested capital commensurate with the risks taken by
79 private investors.
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82 This bill seeks to further amend the BOT Law. It aims to broaden and
83 tighten the legal and policy framework of the government to address many of
84 these points of concern. Specifically, this bill seeks to enunciate a clear-cut policy
85 on government support, adhere to best practices on risk allocation, set the
86 reasonable rate of return for solicited or unsolicited or negotiated projects,
87 institutionalize a fair, honest and competitive procurement process, establish a
88 BOT Authority to rationalize the program implementation, and provide penal
89 provisions for violations of specific offenses enumerated herein.
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91 In view of these compelling reasons, the immediate passage of this bill is
92 earnestly sought.
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99 **JOEY SARTE SALCEDA**

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Introduced by Representative JOEY SARTE SALCEDA

**AN ACT CREATING THE BOT AUTHORITY,
FURTHER AMENDING REPUBLIC ACT NO. 6957, AS AMENDED BY
REPUBLIC ACT NO. 7718, ENTITLED "AN ACT AUTHORIZING THE
FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF
INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR
OTHER PURPOSES"**

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

SECTION 1. Section 1 of Republic Act. No. 6957, as amended, is hereby further
amended to read as follows:

"Sec. 1. Declaration of Policies. – It is the declared policy of the State to
recognize the indispensable role of the private sector as the main engine
for national growth and development and **TO** provide **GOVERNMENT
SUPPORT AND** incentives **THAT SHALL ALLOW THE PRIVATE
SECTOR TO ACHIEVE A REASONABLE RATE OF RETURN ON
ITS INVESTMENTS IN** financing the construction, operation and/or
maintenance of facilities, infrastructure or development projects normally
financed and undertaken by the Government **THROUGH
COMPETITIVE AND TRANSPARENT SELECTION PROCESS.**

**IT IS ALSO THE POLICY OF THE GOVERNMENT TO
PROTECT THE PUBLIC INTEREST BY ENSURING FAIR AND**

143 REASONABLE PRICING AND TIMELY DELIVERY OF
144 QUALITY SERVICES UNDER THE GUIDING PRINCIPLE OF
145 FULL PUBLIC DISCLOSURE OF ALL TRANSACTIONS, AND
146 EQUITABLE RISKS ALLOCATION INHERENT IN PROJECTS
147 UNDERTAKEN THROUGH CONTRACTUAL ARRANGEMENTS
148 AUTHORIZED IN THIS ACT AND SUCH OTHER VARIATIONS
149 AS MAY BE APPROVED BY THE PRESIDENT OF THE
150 PHILIPPINES.

151 THE GRANT BY THE GOVERNMENT OF ANY FORM OF
152 SUPPORT TO THE PRIVATE PROPONENT SHALL BE
153 JUDICIOUSLY AND TRANSPARENTLY ARRANGED
154 CONSISTENT WITH THE APPROPRIATE ECONOMIC AND
155 TECHNICAL REGULATORY FRAMEWORKS TO ENSURE
156 FAITHFUL PERFORMANCE AND DELIVERY OF
157 CONTRACTUAL OBLIGATIONS. INCENTIVES AND
158 SANCTIONS, AS PROVIDED BY LAW, SHALL BE
159 STRINGENTLY APPLIED TO PROMOTE TIMELY
160 COMPLETION OF INFRASTRUCTURE FACILITIES OR
161 DEVELOPMENT PROJECTS.

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163 SECTION 2. Section 2 of the same Act, as amended, is hereby further
164 amended to read as follows:

165 “**Sec. 2. Definition of Terms.** – The following terms used in this Act shall
166 have the meanings stated below:

167 “**(a) Public-Private Infrastructure or Development projects** – The
168 general description of infrastructure or development projects normally
169 financed and operated by the public sector but which will now be wholly
170 or partly implemented by the private sector, including but not limited to,
171 power plants, highways, ports, airports, canals, dams, hydropower
172 projects, water supply, irrigation, telecommunications, railroads and
173 railways, transport systems, land reclamation projects, industrial estates or
174 townships, housing, government buildings, tourism projects, markets,

slaughterhouses, **BULK GRAINS HANDLING FACILITY OR LOGISTIC SUPPORT SYSTEM** warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate agency pursuant to this Act. Such projects shall be undertaken through contractual arrangements as defined hereunder and such other variations as may be approved by the President of the Philippines.

For the construction stage of these infrastructure projects, the project proponents may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: Provided, That in case an infrastructure or a development facility's operation requires a public utility franchise, the facility operator must be Filipino or if a corporation, it must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos: Provided, further, That in the case of foreign contractors, Filipino labor shall be employed or hired in the different phases of the construction where Filipino skills are available: Provided, **FURTHER**, That projects which would have difficulty in sourcing funds may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent. **PROVIDED, FINALLY, THAT IN CASE OF PROJECTS FINANCE PARTLY BY ODA AN APPROPRIATE REVENUE SHARING SCHEME SHALL BE STIPULATED IN THE CONTRACT, WHICH SHALL STATE THAT UPON THE PROPONENT'S REALIZATION OF THE AGREED RATE OF RETURN AS PROPOSED IN THE BID, THE PROPONENT AND THE IMPLEMENTING AGENCY SHALL SHARE THE REVENUE. THE GOVERNMENT'S SHARE SHALL BE REMITTED TO THE NATIONAL TREASURY FOR THE SOLE PURPOSE OF REPAYING THE SAID ODA FUND.**

207 “(b) **Project proponent** — The private sector entity which shall have
208 contractual responsibility for the project and which shall have an adequate
209 financial base to implement said project consisting of equity and A
210 **STAND-BY LETTER OF CREDIT (SLC) ISSUED BY** reputable
211 financial institutions to provide, upon award, sufficient **AMOUNT** to
212 cover the total estimated cost of the project.

213 “(c) **Contractor** — Any entity accredited under the laws which may or
214 may not be the project proponent and which shall undertake the actual
215 construction and/or supply of equipment for the project.

216 “(d) **Facility operator** — A company registered with the Securities and
217 Exchange Commission, which may or may not be the project proponent or
218 its subsidiary, responsible for all aspects of operation and maintenance of
219 the infrastructure or development facility, including but not limited to the
220 collection of tolls, fees, rentals or charges from facility users: Provided,
221 That in case the facility requires a public utility franchise, the facility
222 operator shall be Filipino or at least sixty per centum (60%) owned by
223 Filipinos.

224 “(e) **Direct government guarantee** — an agreement whereby the
225 government or any of its agencies or local government units assume
226 responsibility for the repayment of debt directly incurred by the project
227 proponent in implementing the project in case of a loan default **OR THE**
228 **COUNTERPART FUNDING PROVIDED BY THE GOVERNMENT**
229 **OR ANY OF ITS AGENCIES OR LOCAL GOVERNMENT UNITS**
230 **IN THE CASE OF A BOT PROJECT THAT IS FINANCED**
231 **PARTLY FROM ODA, PROVIDED THAT THE INCLUSION OF**
232 **ANY DIRECT GOVERNMENT GUARANTEE IN A PROJECT**
233 **PROPOSAL SHALL RENDER THE SAME INELIGIBLE AS AN**
234 **UNSOLICITED PROPOSAL.**

235 “(f) **INDIRECT GOVERNMENT GUARANTEE – THIS SHALL**
236 **REFER TO AN AGREEMENT WHEREBY THE GOVERNMENT**
237 **FINANCIAL INSTITUTION (GFI) ASSUMES FULL OR PARTIAL**
238 **RESPONSIBILITY TO MAINTAIN THE FINANCIAL STANDING**
239 **OR CREDIT WORTHINESS OF THE PROJECT PROPONENT OR**

PROJECT COMPANY IN ORDER THAT THE PROJECT COMPANY/PROPONENT AVOIDS DEFAULTING ON THE PROJECT LOANS, SUBJECT TO FULFILLMENT OF THE PROJECT PROPONENT/COMPANY OF ITS UNDERTAKINGS AND OBLIGATIONS UNDER THE PROJECT AGREEMENT.

"(g) **Reasonable rate of return on investments and operating and maintenance cost** — The rate of return that reflects the **WEIGHTED AVERAGE COST OF** prevailing cost of capital in the domestic and international markets **PLUS UP TO SIX PER CENTUM (6%) AS PRIVATE PROPONENT'S PREMIUM IN DOING BUSINESS IN THE COUNTRY:** Provided, That, in case of negotiated contracts, such rate of return shall be determined by the **BOT AUTHORITY PRIOR TO THE NEGOTIATION AND/OR CALL FOR PROPOSALS:** Provided, further, That for negotiated contracts for public utility projects which are monopolies, the rate of return on rate base shall be determined by existing laws, which shall in no case exceed twelve per centum (12%).

"(h) **Construction** — Refers to new construction, rehabilitation, improvement, expansion, alteration and **OTHER** related **CIVIL** works and activities including the necessary supply of equipment, materials, labor and services, and related items.

"(i) **DIRECT GOVERNMENT SUBSIDY– THIS SHALL REFER TO AN AGREEMENT WHEREBY THE GOVERNMENT, OR ANY OF ITS AGENCIES OR LOCAL GOVERNMENT UNITS WILL GIVE AID OR ASSISTANCE, WHETHER FINANCIAL OR OTHERWISE, TO SUPPORT THE PRIVATE UNDERTAKING WHICH IS FOUND TO BENEFIT THE PUBLIC.**

"(j) **GOVERNMENT EQUITY – THIS SHALL REFER TO THE SUBSCRIPTION BY THE GOVERNMENT OR ANY OF ITS AGENCIES OR LOCAL GOVERNMENT UNITS OF SHARES OR OTHER SECURITIES CONVERTIBLE TO SHARES OF STOCK OF THE PROJECT COMPANY, WHETHER SUCH SUBSCRIPTION WILL BE PAID BY MONEY OR ASSETS.**

272 “(k) CREDIT ENHANCEMENTS – THIS SHALL REFER TO
273 DIRECT AND INDIRECT SUPPORT TO A DEVELOPMENT
274 FACILITY BY THE PROJECT PROPONENT AND/OR
275 AGENCY/LGU CONCERNED, THE PROVISION OF WHICH IS
276 CONTINGENT UPON THE CONCURRENCE OF CERTAIN
277 EVENTS AND/OR RISKS, SUBJECT TO THE APPROVAL OF
278 THE BOT AUTHORITY.

279 “(l) PROJECT COST – REFERS TO THE TOTAL COST TO BE
280 EXPENDED BY THE PROPONENT TO PLAN, DEVELOP AND
281 CONSTRUCT THE PROJECT TO COMPLETION, PLUS A
282 WORKING CAPITAL OF SIX (6) MONTHS, INCLUDING BUT
283 NOT LIMITED TO SUCH COSTS AS FEASIBILITY STUDY
284 PREPARATION, DETAILED ENGINEERING AND DESIGN,
285 CONSTRUCTION, IMPROVEMENTS, EQUIPMENT, LAND AND
286 RIGHT-OF-WAY.

287
288 **SECTION 3.** Section 3 of Republic Act No 6957, as amended, is hereby further
289 amended to read as follows:

290 “Sec. 3. PRIVATE INITIATIVE IN INFRASTRUCTURE – ALL
291 NATIONAL GOVERNMENT PRIORITY INFRASTRUCTURE OR
292 DEVELOPMENT PROJECTS SHALL BE SUBMITTED TO THE
293 BOT AUTHORITY FOR APPROVAL, WHILE ALL LOCAL
294 GOVERNMENT PRIORITY INFRASTRUCTURE OR
295 DEVELOPMENT PROJECTS SHALL BE SUBMITTED TO THE
296 BOT AUTHORITY FOR INFORMATION ONLY. THE BOT
297 AUTHORITY CREATED UNDER THIS ACT SHALL BE THE
298 SOLE AND EXCLUSIVE APPROVING AUTHORITY FOR
299 NATIONAL GOVERNMENT PRIORITY INFRASTRUCTURE OR
300 DEVELOPMENT PROJECTS, THE PRESIDENT OF THE
301 PHILIPPINES OR HIS DULY AUTHORIZED REPRESENTATIVE
302 SHALL, FOR PURPOSES OF TRANSPARENCY AND
303 ACCOUNTABILITY, EXECUTE THE CONTRACT FOR AND IN
304 BEHALF OF THE REPUBLIC OF THE PHILIPPINES WITH ANY

DULY PRE-QUALIFIED PROJECT PROPONENT FOR ALL PROJECTS, PROVIDED, THAT THESE PROJECTS HAVE BEEN APPROVED BY THE BOT AUTHORITY AND RECOMMENDED BY THE PUBLIC-PRIVATE INFRASTRUCTURE COMMITTEE CREATED UNDER THIS ACT. FOR THE LOCAL GOVERNMENT PROJECTS, THE LOCAL CHIEF EXECUTIVE DULY AUTHORIZED BY THE SANGGUNIAN MANIFESTED IN A RESOLUTION SHALL EXECUTE THE CONTRACT. PROVIDED, THAT THE PROJECT IS APPROVED BY THE LOCAL DEVELOPMENT COUNCIL (LDC), AND THE SANGGUNIAN CONCERNED. PROVIDED, FURTHER, THAT LGU PROJECTS HAVE BEEN SUBMITTED FOR INFORMATION PURPOSES TO THE BOT AUTHORITY. THE BOT AUTHORITY AND THE PUBLIC-PRIVATE INFRASTRUCTURE COMMITTEE CREATED UNDER THIS ACT SHALL COMMENCE AND COMPLETE THEIR REVIEW WITHIN SIXTY CALENDAR DAYS (60) AND THEREAFTER, ISSUE A CLEARANCE MANIFESTING COMPLIANCE WITH THE BOT LAW AND ITS IRR. PROVIDED, FINALLY, THAT THE SUBMITTED PROJECT DOCUMENTS, I. E., FEASIBILITY STUDY, AND THE DRAFT CONTRACT ARE COMPLIANT WITH THE REQUIREMENTS SET FORTH IN THE BOT LAW AND ITS IRR. ANY UNDUE DELAY COMMITTED BY THE CONCERNED REVIEWING OFFICER(S) SHALL BE ADMINISTRATIVELY DEALT WITH IN ACCORDANCE WITH EXISTING LAWS.”

SECTION 4. A new section to be numbered as Section 4 of the same Act, as amended, is hereby added, to read as follows:

“Sec. 4.Contractual Arrangements –

“(a) *Build-operate-and-transfer* — A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility

over the fixed term during which it is allowed to charge facility users appropriate tools, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years: Provided, That in case of an infrastructure or development facility whose operation requires a public utility franchise, the proponent must be Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos.

"The build-operate-and-transfer shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.

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

"(c) Build-own-and-operate — A contractual arrangement whereby a project proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the proponent is allowed to recover its total investment, operating

and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users: Provided, That all such projects, upon recommendation of the Investment Coordination Committee (ICC) of the National Economic and Development Authority (NEDA), shall be approved by the President of the Philippines. Under this project, the proponent which owns the assets of the facility may assign its operation and maintenance to a facility operator.

"(d) Build-lease-and-transfer — A contractual arrangement whereby a project proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the government agency or local government unit concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the government agency or local government unit concerned.

"(e) Build-transfer-and-operate — A contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private entity such that the contractor builds the facility on a turn-key basis, assuming cost overrun, delay, and specified performance risks.

"Once the facility is commissioned satisfactorily, title is transferred to the implementing agency. The private entity however, operates the facility on behalf of the implementing agency under an arrangement.

"(f) Contract-add-and-operate — A contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the government. It operates the expanded project over an agreement franchise period. There may, or may not be, a transfer arrangement in regard to the facility.

"(g) Develop-operate-and-transfer — A contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a private 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) *Rehabilitate-operate-and-transfer* — A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.

"(i) *Rehabilitate-own-and-operate* — A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.

"(j) CONCESSION – A CONTRACTUAL ARRANGEMENT WHEREBY THE PROPONENT UNDERTAKES THE FINANCING AND CONSTRUCTION OF A NEW FACILITY AND/OR REHABILITATION OF AN EXISTING FACILITY AFTER THE TURNOVER THEREOF BY THE IA/LGU, AND INCLUDES THE OPERATION, MAINTENANCE, MANAGEMENT AND IMPROVEMENT, IF ANY, OF THE FACILITY FOR A FIXED TERM DURING WHICH THE PROJECT PROPONENT GENERALLY PROVIDES SERVICE DIRECTLY TO FACILITY USERS AND IS ALLOWED TO CHARGE AND COLLECT THE APPROVED TOLLS, FEES, TARIFFS, RENTALS OR CHARGES. THE IA/LGU MAY RECEIVE A CONCESSION OR FRANCHISE FEE DURING THE TERM OF THE CONTRACT AND/OR OTHER CONSIDERATION FOR THE TRANSFER, OPERATION OR USE OF ANY FACILITY. THERE MAY OR MAY NOT BE A TRANSFER

ARRANGEMENT FOR THE FACILITY AFTER THE
CONCESSION PERIOD HAS ENDED.

“(k) JOINT VENTURE – A CONTRACTUAL ARRANGEMENT
WHEREBY THE PROJECT PROPONENT AND THE
IA/LGU CONTRIBUTE ASSETS OR OTHER LEGAL
CONSIDERATION AND SHARE RISKS TO JOINTLY
UNDERTAKE THE FINANCING (UP TO THE EXTENT
ALLOWED UNDER THIS ACT), CONSTRUCTION,
REHABILITATION, AND/OR OPERATION,
MAINTENANCE AND MANAGEMENT OF A NEW
AND/OR EXISTING FACILITY. IT INVOLVES A
COMMUNITY OR POOLING OF INTERESTS IN THE
PERFORMANCE OF THE SERVICE, FUNCTION,
BUSINESS OR ACTIVITY, WITH EACH PARTY HAVING
A RIGHT TO DIRECT AND GOVERN THE POLICY IN
CONNECTION THEREWITH AND WITH A VIEW TO
SHARING BOTH PROFITS AND LOSSES, SUBJECT TO
AGREEMENT BY THE PARTIES.

“(l) MANAGEMENT OR SERVICE CONTRACT – A
CONTRACTUAL ARRANGEMENT INVOLVING THE
MANAGEMENT OR PROVISION BY THE PROJECT
PROponent OF OPERATION AND MAINTENANCE OR
RELATED SERVICES FOR A LIMITED PERIOD TO AN
EXISTING INFRASTRUCTURE OR DEVELOPMENT
FACILITY OWNED OR OPERATED BY THE IA/LGU.
THE PROJECT PROPONENT RECEIVES A
MANAGEMENT OR SERVICE FEE DURING THE
CONTRACT TERM.

“(m) LEASE OR AFFERMAGE – A CONTRACTUAL
ARRANGEMENT PROVIDING FOR OPERATION,
MAINTENANCE, AND MANAGEMENT SERVICES BY
THE PROJECT PROPONENT INCLUDING WORKING
CAPITAL AND/OR IMPROVEMENTS TO AN EXISTING

468 INFRASTRUCTURE OR DEVELOPMENT FACILITY
469 LEASED BY SAID PROPONENT FROM THE IA/LGU FOR
470 A FIXED TERM. THEN PROJECT PROPONENT PAYS
471 THE IA/LGU A RENTAL FEE AND RECEIVES THE
472 APPROVED TOLLS, FEES, RENTALS OR CHARGES
473 FROM FACILITY USERS. IT MAY OR MAY NOT HAVE A
474 PURCHASE OPTION AT THE END OF THE LEASE
475 PERIOD. IF SUCH ARRANGEMENT CONSTITUTES
476 FINANCIAL LEASING UNDER SPECIAL LAWS, IT
477 SHALL BE APPROVED BY THE CONCERNED
478 GOVERNMENT AGENCIES IN ACCORDANCE WITH
479 SAID LAWS.”

480
481 **SECTION 5.** Section 4 of the same Act, as amended, is hereby renumbered as
482 Section 5 and further amended to read as follows:

483 **“Sec. 5. Priority Projects.** — All concerned government agencies,
484 including government-owned and -controlled corporations and local
485 government units, shall include in their development programs those
486 priority projects that may be financed, constructed operated and
487 maintained by the private sector under the provisions of this Act. It shall
488 be the duty of all concerned government agencies **AND LOCAL**
489 **GOVERNMENT UNITS** to **SUBMIT TO THE TO THE BUILD-**
490 **OPERATE-AND TRANSFER (BOT) AUTHORITY LIST OF**
491 **PROJECTS ELIGIBLE FOR FINANCING UNDER THIS ACT FOR**
492 **CENTRALIZED PUBLICATION AND ROAD SHOW**
493 **PRESENTATION ABROAD.**

494 **THE BOT AUTHORITY AND THE PUBLIC – PRIVATE**
495 **INFRASTRUCTURE COMMITTEE CREATED UNDER THIS ACT**
496 **SHALL, WITHIN THE MANDATORY PERIOD OF SIXTY**
497 **CALENDAR DAYS (60) COMPLETE ITS REVIEW AND**
498 **THEREAFTER, ISSUE A CLEARANCE MANIFESTING**
499 **COMPLIANCE OF THE BOT LAW IRR. FAILURE TO ACT**

500 **WITHIN THE PRESCRIBED PERIOD THE SAME SHALL BE**
501 **DEEMED APPROVED."**

502
503 **SECTION 6.** Section 4-A of Republic Act No. 6957, as amended, is hereby
504 renumbered as Section 5-A and further amended to read as follows:

505 **"Sec. 5 -A. Unsolicited Proposals.** — Unsolicited proposals for
506 projects may be accepted by any government agency or local government
507 unit, **WHICH SHALL BE FORWARDED TO THE BOT**
508 **AUTHORITY FOR APPROPRIATE ACTION WITHIN FIFTEEN**
509 **(15) WORKING DAYS UPON RECEIPT THEREOF: PROVIDED,**
510 **THAT NO DIRECT GOVERNMENT GUARANTEE, SUBSIDY OR**
511 **EQUITY IS REQUIRED: PROVIDED FURTHER, THAT THE**
512 **UNSOLICITED PROPOSAL SHALL BE SUBJECT TO OPEN**
513 **COMPARATIVE OR COMPETITIVE TENDER PROCESS. A**
514 **PERIOD OF FORTY-FIVE (45) TO ONE HUNDRED TWENTY**
515 **(120) DAYS MAY BE PRESCRIBED FOR THE PREPARATION OF**
516 **COMPARATIVE OR COMPETITIVE PROPOSALS.**

517 **"PROVIDED, FINALLY, THAT IN THE EVENT THAT THE**
518 **CONTRACT IS AWARDED TO A CHALLENGER WHICH**
519 **SUBMITS A LOWER PRICE PROPOSAL, THE FORMER SHALL**
520 **REIMBURSE THE ACTUAL DEVELOPMENT COST EXPENDED**
521 **BY THE ORIGINAL PROPONENT ON THE PROJECT WHICH**
522 **SHALL BE DISCLOSED DURING THE COMPARATIVE OR**
523 **COMPETITIVE TENDER PROCESS."**

524
525 **SECTION 7.** Section 5 of the same Act, as amended, is hereby renumbered as
526 Section 6 and further amended to read as follows:

527 **"Sec. 6. Public Bidding of Projects.** — Upon approval of the subjects
528 mentioned in Section 5 of this Act, the head of the **BOT AUTHORITY,**
529 **FOR NATIONAL INFRASTRUCTURE OR DEVELOPMENT**
530 **PROJECTS, SHALL FORTHWITH CAUSE TO BE PUBLISHED,**
531 **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 IN WHICH THE PROJECT IS TO BE CONSTRUCTED, A NOTICE INVITING ALL PROSPECTIVE INFRASTRUCTURE OR DEVELOPMENT PROJECT PROPONENTS TO PARTICIPATE IN A COMPETITIVE PUBLIC BIDDING FOR THE PROJECTS SO APPROVED. FOR LGU PROJECTS, THE LOCAL CHIEF EXECUTIVE SHALL FORTHWITH CAUSE TO BE PUBLISHED, 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, A NOTICE INVITING ALL PROSPECTIVE INFRASTRUCTURE OR DEVELOPMENT PROJECT PROPONENTS TO PARTICIPATE IN A COMPETITIVE PUBLIC BIDDING FOR THE PROJECTS SO APPROVED.

"In the case of a build-operate-and-transfer arrangement, the contract shall be awarded to the bidder who, having satisfied the minimum financial, technical, organizational and legal standards required by this Act, has submitted the lowest bid and most favorable terms for the project, based on the present value of its proposed tolls, fees, rentals and charges over a fixed term for the facility to be constructed, rehabilitated, operated and maintained according to the prescribed minimum design and performance standards, plans and specifications. For this purpose, the winning project proponent shall be automatically granted by the appropriate agency the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals, and charges in accordance with Section 6 hereof.

"In the case of a build-and-transfer or build-lease-and-transfer arrangement, the contract shall be awarded to the lowest applying bidder based on the present value of its proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans and specifications:

565 Provided, however, That a Filipino contractor who submits an equally
566 advantageous bid with exactly the same price and technical specifications
567 as those of a foreign contractor shall be given preference.

568 "In all cases, a consortium that participates in a bid must present proof that
569 the members of the consortium have bound themselves jointly and
570 severally to assume responsibility for any project. The withdrawal of any
571 member of the consortium prior to the implementation of the project could
572 be a ground for the cancellation of the contract.

573 "The public bidding must be conducted under a two-envelope/two-stage
574 system: the first envelope to contain the technical proposal and the second
575 envelope to contain the financial proposal. The procedures for this system
576 shall be outlined in the implementing rules and regulations of this Act.

577 "A copy of a duly executed contract involving a project entered into under
578 this Act shall forthwith be submitted by the Implementing Agency or
579 Local Government Unit to Congress and BOT Authority for its
580 information."

581
582 **SECTION 8.** Section 5-A of the same Act, as amended, is hereby renumbered as
583 Section 6-A and further amended to read as follows:

584 **"Sec. 6-A. Direct Negotiation of Contracts.** — Direct negotiation
585 shall be resorted to when there is only one complying bidder left as
586 defined hereunder:

587 "(a) If, after advertisement, only one bidder applies for pre-qualification
588 and it meets the pre-qualification requirements, after which it is
589 required to submit a bid/proposal which is subsequently found by
590 the agency/local government unit (LGU) to be complying.

591 "(b) If, after advertisement, more than one bidder applied for pre-
592 qualification but only one meets the prequalification requirements,
593 after which it submits bid/proposal which is found by the
594 agency/LGU to be complying.

- 595 "(c) If, after pre-qualification of more than one bidder, only one submits
596 a bid which is found by the agency/LGU to be complying.
- 597 "(d) If, after pre-qualification, more than one bidder submit bids but
598 only one is found by the agency/LGU to be complying: *Provided,*
599 That, any of the disqualified prospective bidder may appeal the
600 decision of the implementing agency/LGUs Pre-qualification Bids
601 and Awards Committee within fifteen (15) working days to the
602 head of the agency, in case of national projects; to the
603 **CONCERNED LOCAL CHIEF EXECUTIVE**, in case of local
604 projects, from the date the disqualification was made known to the
605 disqualified bidder: *Provided, furthermore,* That the implementing
606 agency concerned or **CONCERNED LOCAL CHIEF**
607 **EXECUTIVE** concerned should act on the appeal within seven (7)
608 calendar days from receipt thereof."

609

610 **SECTION 9.** Section 6 of the same Act, as amended, is hereby renumbered as
611 Section 7 to read as follows:

612 **"Sec. 7. Repayment Scheme.** — For the financing, construction,
613 operation and maintenance of any infrastructure projects undertaken
614 through the build-operate-and-transfer arrangement or any of its variations
615 pursuant to the provisions of this Act, the project proponent shall be repaid
616 by authorizing it to charge and effect reasonable tolls, fees, and rentals for
617 the use of the project facility not exceeding those incorporated in the
618 contract and, where applicable, the proponent may likewise be repaid in
619 the form of a share in the revenue of the project or other non-monetary
620 payments, such as, but not limited to, the grant of a portion or percentage
621 of the reclaimed land, subject to the constitutional requirements with
622 respect to the ownership of land: *Provided,* That for negotiated contracts,
623 and for projects which have been granted a natural monopoly or where the
624 public has no access to alternative facilities, the appropriate government
625 regulatory bodies, shall approve the tolls, fees, rentals, and charges based
626 on a reasonable rate of return: *Provided, further,* That the imposition and
627 collection of tolls, fees, rentals, and charges shall be for a fixed term as

proposed in the bid and incorporated in the contract but in no case shall this term exceed fifty (50) years: Provided, furthermore, That the tolls, fees, rentals, and charges may be subject to adjustment during the life of the contract, based on a predetermined formula using official price indices and included in the instructions to bidders and in the contract: Provided, also, That all tolls, fees, rentals, and charges and adjustments thereof shall take into account the reasonableness of said rates to the end-users of private sector-built infrastructure: Provided, finally, That during the lifetime of the franchise, the project proponent shall undertake the necessary maintenance and repair of the facility in accordance with standards prescribed in the bidding documents and in the contract. In the case of a built-and-transfer arrangement, the repayment scheme is to be effected through amortization payments by the government agency or local government unit concerned to the project proponent according to the scheme proposed in the bid and incorporated in the contract."

SECTION 10. A new section to be numbered as Section 8 of the same Act, as amended, is hereby added to read as follows:

"Sec. 8. PROJECT DEVELOPMENT FACILITY. – THERE IS HEREBY CREATED A PROJECT DEVELOPMENT FACILITY (PDF) THAT SHALL SERVE AND BE OPERATED AS A REVOLVING FUND TO FINANCE THE PROPER IDENTIFICATION, STUDY, VALIDATION, DEVELOPMENT, AND PREPARATION FOR PUBLIC BIDDING OR OTHER COMPETITIVE PROCESS, OF PRIVATE SECTOR INFRASTRUCTURE OR DEVELOPMENT PROJECTS IMPLEMENTED UNDER THIS ACT OR OTHER LAWS. THE PDF SHALL BE ADMINISTERED BY AN INTER-AGENCY STEERING COMMITTEE UNDER THE BOT AUTHORITY, AND SHALL BE SUBJECT TO THE CONDITIONS PRESCRIBED BY LAW ON REVOLVING FUNDS AND OTHER APPLICABLE GOVERNMENT RULES AND REGULATIONS."

661 **SECTION 11.** Section 7 of the same Act, as amended, is hereby renumbered as
662 Section 9 and further amended to read as follows:

663 **"Sec. 9. CONTRACT TERMINATION. – IN THE EVENT THAT A**
664 **CONTRACT IS TERMINATED THROUGH NO FAULT ON THE**
665 **PART OF THE PROJECT PROPONENT, THE GOVERNMENT**
666 **SHALL COMPENSATE THE SAID PROJECT PROPONENT FOR**
667 **ITS ACTUAL EXPENSES INCURRED IN THE PROJECT PLUS A**
668 **REASONABLE RATE OF RETURN NOT EXCEEDING THAT**
669 **STATED IN THE CONTRACT AS OF THE DATE OF SUCH**
670 **TERMINATION.**

671 **"IN THE EVENT THAT THE PROJECT PROPONENT**
672 **DEFAULTS ON CERTAIN MAJOR OBLIGATIONS IN THE**
673 **CONTRACT AND SUCH FAILURE IS NOT REMEDIABLE OR IF**
674 **REMEMDIABLE SHALL REMAIN UNREMEDIED FOR AN**
675 **UNREASONABLE LENGTH OF TIME, THE GOVERNMENT**
676 **MAY, BY PRIOR NOTICE TO THE PROJECT PROPONENT,**
677 **TERMINATE THE CONTRACT. THE GOVERNMENT SHALL**
678 **CALL ON THE PERFORMANCE SECURITY POSTED BY THE**
679 **PROJECT PROPONENT AS PROVIDED FOR IN THE**
680 **CONTRACT."**

681
682 **SECTION 12.** Section 8 of the same Act, as amended, is hereby renumbered as
683 Section 10 to read as follows:

684 **"Sec. 10. Regulatory Boards. — The Toll Regulatory Board which**
685 **was created by Presidential Decree No. 1122 is hereby attached to the**
686 **BOT AUTHORITY WITH THE DIRECTOR-GENERAL AS**
687 **CHAIRMAN."**

688
689 **SECTION 13.** Section 10 of the same Act, as amended, is hereby renumbered as
690 Section 11 to read as follows:

691 **"Sec. 11. Investments Incentives. — Among other incentives,**
692 **projects in excess of One billion pesos (P1,000,000,000) shall be entitled**

to incentives as provided by the Omnibus Investments Code, upon registration with the Board of Investments."

SECTION 14. A new section to be numbered as Section 12 of the same Act, as amended, is hereby further added to read as follows:

"Sec. 13. WARRANTY TO UPHOLD THE VALIDITY OF THE CONTRACT. – THE REPUBLIC OF THE PHILIPPINES OR LOCAL GOVERNMENT UNITS SHALL BE BOUND TO UPHOLD THE VALIDITY AND ENFORCEABILITY OF A DULY EXECUTED CONTRACT, UNLESS PROVEN OTHERWISE. IN THE EVENT OF A CHANGE OF ADMINISTRATION, THE PRESIDENT OF THE PHILIPPINES OR LOCAL CHIEF EXECUTIVE MAY INQUIRE AND REVIEW THE TERMS AND CONDITIONS SET FORTH IN THE SUBSISTING CONTRACT, AND IF IT CAN BE FOUND THAT THE PROCESSES LAID DOWN IN THIS ACT AND ITS IRR ARE NOT COMPLIED, THE PRESIDENT, UPON RECOMMENDATION OF THE CHIEF LEGAL COUNSEL OR THE CHIEF LOCAL EXECUTIVE SHALL CAUSE THE RESCISSION OF THE AGREEMENT.

SECTION 15. Section 11 of the same Act, as amended, is hereby renumbered as Section 13 and further amended to read as follows:

"Sec. 13. Implementing Rules and Regulations. — A committee composed of one (1) representative each from the Department of Public Works and Highways, the Department of Transportation and Communications, the Department of Energy, the Department of Environment and Natural Resources, the Department of Agriculture, the Department of Trade and Industry, the Department of Finance, the Department of the Interior and Local Government, the National Economic and Development Authority, the **BUILD-OPERATE-AND-TRANSFER (BOT) AUTHORITY**, and other concerned government agencies shall, within sixty (60) days from the effectivity of this Act, formulate and

725 prescribe, after public hearing and publication as required by law, the
726 implementing rules and regulations including, among others, the criteria
727 and guidelines for evaluation of bid proposals, list of financial incentives
728 and arrangements that the Government may provide for the project, in
729 order to carry out the provisions of this Act in the most expeditious
730 manner.

731 "The Chairman of this committee shall be appointed by the President of
732 the Philippines from its members.

733 "From time to time the committee may conduct, formulate and prescribe,
734 after due public hearing and publication, amendments to the implementing
735 rules and regulations, consistent with the provisions of this Act."

736

737 **SECTION 16.** A new section to be numbered as Section 14 of the same Act, as
738 amended, is hereby further added to read as follows:

739 **"Sec. 14. - PUBLIC-PRIVATE INFRASTRUCTURE**
740 **DEVELOPMENT COMMITTEE. - THE PUBLIC-PRIVATE**
741 **INFRASTRUCTURE DEVELOPMENT COMMITTEE**
742 **(HEREINAFTER REFERRED TO AS THE COMMITTEE') SHALL**
743 **BE CREATED AS A POLICY-MAKING BODY TO PERFORM**
744 **THE FOLLOWING FUNCTIONS:**

745

746 **1. FORMULATE MAJOR POLICIES IN REGARD TO**
747 **PRIVATE SECTOR INVESTMENTS IN**
748 **INFRASTRUCTURE;**

749 **2. ESTABLISH AND MODIFY THE ANNUAL, MEDIUM AND**
750 **LONG TERM INFRASTRUCTURE PLANS FOR PRIVATE**
751 **SECTOR PARTICIPATION;**

752 **3. ESTABLISH AND MODIFY THE INSTRUCTION FOR**
753 **PROPOSAL FOR PRIVATE PARTICIPATION IN**
754 **INFRASTRUCTURE PROJECTS / DEVELOPMENT**

FACILITIES WHICH MEET THE REQUIREMENTS AS
PRESCRIBED BY THIS ACT; AND

4. PROMOTE PRIVATE INVESTMENT PROJECTS

14.1. - COMPOSITION AND OPERATION OF THE BOARD

THE BOARD SHALL BE HEADED BY THE PRESIDENT OF
THE PHILIPPINES AS EX OFFICIO CHAIRMAN; CO-CHAIR
ED BY THE NEDA SECRETARY AND THE BOT AUTHORITY
DIRECTOR-GENERAL, AND COMPOSED OF FOURTEEN (14)
MEMBERS AS FOLLOWS: THE SECRETARIES OR THEIR
REPRESENTATIVES OF THE DBM, DILG, DA, DPWH,
DENR, DTI, AND DOJ; THE PRESIDENTS OF THE
LEAGUE OF PROVINCIAL GOVERNORS, THE LEAGUE
OF CITY MAYORS, AND THE LEAGUE OF MUNICIPAL
MAYORS, PRESIDENT OF THE PHILIPPINE STOCK
EXCHANGE, REPRESENTATIVE OF THE BANGKO SENTRAL
NG PHILIPPINES, CHAIRMAN OF THE COMMISSION ON
AUDIT, PRESIDENT OF THE BANKERS ASSOCIATION
OF THE PHILIPPINES, NATIONAL PRESIDENT OF THE
FEDERATION OF CHAMBER OF COMMERCE AND
INDUSTRY, AND PRESIDENT OF THE PHILIPPINE
CONTRACTORS ASSOCIATION.

1. THE BOARD SHALL TRANSMIT TO THE BOT
AUTHORITY THE APPROVED POLICY AND PROGRAM
FOR PRIVATE SECTOR PARTICIPATION; AND,

2. THE FUNDS FOR THE OPERATION OF THE BOARD
SHALL BE TAKEN FROM THE BUDGET OF THE BOT
AUTHORITY.

***14.2 CONVERSION OF THE BOT CENTER TO BOT
AUTHORITY***

1. THE BOT CENTER, AN AGENCY CURRENTLY
ATTACHED TO THE DEPARTMENT OF TRADE AND

INDUSTRY (DTI) PURSUANT TO EO 144, S. 2002, SHALL BE CONVERTED INTO THE BUILD-OPERATE-AND TRANSFER (BOT) AUTHORITY (HEREINAFTER REFERRED TO AS THE "AUTHORITY") AND ITS ATTACHMENT IS HEREBY REVERTED TO THE OFFICE OF THE PRESIDENT, FOR EFFECTIVE PROGRAM IMPLEMENTATION.

THE BOT AUTHORITY SHALL ACT AS THE CENTRAL BODY OF THE GOVERNMENT FOR ALL BOT/PSP PROJECTS.

2. HEAD QUARTERS. – THE HEAD QUARTERS OF THE BOT AUTHORITY SHALL BE AT THE EDPC BUILDING, BSP COMPLEX, A. MABINI STREET, MALATE, MANILA, UNTIL SUCH TIME THAT THE BOT AUTHORITY BE PROVIDED WITH SUFFICIENT FUNDS FOR THE CONSTRUCTION OF ITS PERMANENT PREMISES AND HEADQUARTERS UNDER THE GAA.

3. CONSTITUTION OF THE AUTHORITY. – THE AUTHORITY SHALL BE HEADED BY A DIRECTOR-GENERAL, WHO SHALL BE APPOINTED BY THE PRESIDENT OF THE PHILIPPINES. THE DIRECTOR-GENERAL SHALL BE ASSISTED BY TWO DEPUTY DIRECTOR-GENERALS, ONE EACH FOR TECHNICAL SERVICES; AND FOR ADMINISTRATION, FINANCE, AND OPERATIONS. THE PRESENT ORGANIZATIONAL STRUCTURE AND PERSONNEL COMPLEMENT OF THE BOT CENTER UNDER EXECUTIVE ORDER NO. 144, SERIES OF 2002 SHALL BE ABSORBED AUTOMATICALLY INTO THE BOT AUTHORITY SUBJECT TO CIVIL SERVICE RULES AND REGULATIONS.

4. BUDGET. – THE INITIAL ANNUAL BUDGET FOR THE OPERATIONS OF THE AUTHORITY IS PESOS: FOUR

HUNDRED EIGHTY MILLION (PHP 480,000,000.00)
WHICH WILL BE TAKEN FROM THE GAA.

5. ESTABLISHMENT OF REGIONAL OFFICES. - THE
AUTHORITY SHALL ESTABLISH REGIONAL OFFICE
IN LUZON, VISAYAS AND MINDANAO.

6. ACCOUNTS AND AUDIT. - THE ACCOUNTS OF THE
AUTHORITY SHALL BE PREPARED AND
MAINTAINED IN ACCORDANCE WITH GOVERNMENT
ACCOUNTING AND AUDITING RULES AND
PROCEDURES.

7. APPROVAL AND RECOMMENDATION BY THE
AUTHORITY. - ALL PROJECT PROPOSALS AND
CONTRACTS INVOLVING CONTRACTUAL
ARRANGEMENTS PROPOSED TO BE IMPLEMENTED
UNDER THIS LAW SHALL BE SUBMITTED BY
NATIONAL GOVERNMENT IMPLEMENTING
AGENCIES AND LGUS TO THE BOT AUTHORITY. THE
BOT AUTHORITY SHALL BE THE SOLE AND
EXCLUSIVE APPROVING AUTHORITY FOR BOT/PSP
PROJECTS FOR NATIONAL GOVERNMENT AGENCIES
AND SHALL BE RECOMMENDATORY FOR BOT/PSP
PROJECTS OF LGUS.

8. ONE-STOP SHOP.-THE AUTHORITY SHALL
ESTABLISH A ONE-STOP SHOP FOR INVESTORS TO
PROCURE ANY AND ALL NATIONAL GOVERNMENT
LICENSES, PERMITS AND APPROVALS, OF
WHATSOEVER NATURE AND DESCRIPTION, FOR
BOT/PSP projects, HOUSED WITHIN AND OPERATED
BY THE BOT CENTER. THERE SHALL ALSO BE
WITHIN THE ONE-STOP SHOP, REGIONAL DESKS
CONTAINING COMPREHENSIVE LISTINGS, CHECK-
LISTS AND FORMS OF SUCH LGU LICENSES,

PERMITS AND APPROVALS AS MAY BE REQUIRED BY
EACH LGU.

9. COORDINATION AND MONITORING OF PROJECTS.
— THE AUTHORITY SHALL COORDINATE, MONITOR
AND FACILITE THE IMPLEMENTATION OF ALL
PROJECTS WITH CONTRACTUAL ARRANGEMENTS
COVERED BY THIS ACT.

AT THE END OF EVERY CALENDAR YEAR, THE BOT
AUTHORITY SHALL REPORT TO THE PRESIDENT AND
TO CONGRESS ON THE PROGRESS OF THE
IMPLEMENTATION OF ALL PROJECTS WITH
CONTRACTUAL ARRANGEMENTS COVERED BY THIS
ACT.

14.3 PENAL PROVISIONS

1. A PERSON WHO FALLS UNDER ANY OF THE
FOLLOWING SUBPARAGRAPH SHALL BE PUNISHED
IN ACCORDANCE WITH THE APPLICABLE
PROVISIONS OF THE REVISED PENAL CODE, R.A. NO.
3019, AS AMENDED, AND R.A. No. 6713.

2. MISREPRESENTATION. - A PERSON WHO, IN
BEHALF OF THE PROJECT COMPANY, REPRESENTS
AND WARRANTS THAT IT HAS THE NECESSARY
CAPITALIZATION TO COMMENCE WORK OF THE
PROJECT WITH IN THIRTY (30) DAYS FROM NOTICE
TO PROCEED WHICH TURN OUT TO BE FALSE IN
MATERIAL RESPECT;

3.CONTRACT FALSIFICATION. - ANY PERSON,
REPRESENTING FOR AND IN BEHALF OF THE BOT
AUTHORITY OR NATIONAL GOVERNMENT
AGENCIES OR LOCAL GOVERNMENT UNITS FOUND
TO HAVE COOPERATED, CONSPIRED, OR COLLUDED
WITH THE PRIVATE PROPONENT TO CAUSE THE

884 INSERTION OF CERTAIN PROVISION(S) IN THE FINAL
885 BOT AGREEMENT/CONTRACT, WHICH IN EFFECT,
886 MADE THE AGREEMENT/CONTRACT MATERIALLY
887 AND SUBSTANTIALLY DIFFERENT FROM THE
888 APPROVED DRAFT BOT AGREEMENT/CONTRACT BY
889 THE LOCAL SANGGUNIAN OR THE BOT AUTHORITY,
890 WHICHEVER IS APPLICABLE, WHICH FORM A PART
891 OF THE AGENCY'S/LGU'S REQUEST FOR PROPOSAL
892 (RFP) FOR SOLICITED PROJECT OR REQUEST FOR
893 COMPARATIVE PROPOSAL (RCP) FOR UNSOLICITED
894 PROJECT.

895 4.ANY OFFICER OF THE BOT AUTHORITY WHO IS
896 FOUND TO HAVE EXTENDED ANY FORM OF
897 ASSISTANCE TO A PRE-QUALIFIED BIDDER OF A
898 PARTICULAR PROJECT, SPECIFICALLY IN THE
899 PREPARATION OF THE BIDDER'S TECHNICAL AND
900 FINANCIAL PROPOSALS FOR PUBLICLY BID
901 PROJECT, AND ASSISTANCE TO THE PROJECT
902 PROPONENT IN CRAFTING PROPOSED MATERIAL
903 AND SUBSTANTIAL AMENDMENT(S) TO THE DULY
904 EXECUTED CONCESSION AGREEMENT/BOT
905 CONTRACT.

906 **14.4 MISCELLANEOUS PROVISION**

907 **1.FEES. THE AUTHORITY IS HEREBY AUTHORIZED TO**
908 **CHARGE APPROPRIATE FEES AS MAY BE PROVIDED**
909 **FOR UNDER THE IMPLEMENTING RULES AND**
910 **REGULATIONS OF THIS LAW.**

911
912 **SECTION 18.** Section 13 of the same Act, as amended, is hereby
913 renumbered as Section 15, to read as follows:

914 **“Sec. 15. Repealing Clause.** – All laws or parts of any law inconsistent
915 with the provisions of this Act are hereby repealed or modified
916 accordingly.”

917

918 **SECTION 19.** Section 14 of the same Act, as amended, is hereby renumbered as
919 Section 16 to read as follows:

920 **“Sec. 16. Separability Clause.** – If any provision of this Act is held
921 invalid, the other provisions not affected thereby shall continue in
922 operation.”

923

924 **SECTION 20.** Section 15 of the same Act, as amended, is hereby renumbered as
925 Section 17 to read as follows:

926 **“Sec. 19. Effectivity Clause.** – This Act shall take effect fifteen (15) days
927 after its publication in at least two (2) newspapers of general circulation.”