

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

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL No. 276



Introduced by Honorable Jose C. De Venecia, Jr.

EXPLANATORY NOTE

The National Government (NG) deficit increased from 1.9% of Gross Domestic Product (GDP) in 1998 to as much as 4.6% in 2003. A persistent deficit creates doubt within the financial markets on government's ability to repay its debt, thus, pushing the cost of borrowing even higher. The makings of a financial crisis increasingly threatens the entire economy until a point is reached when business confidence is lost and creditors refuse to lend any further.

Thus, it is very important to dramatically reduce the NG deficit. One way is to cut on public expenditures. However, this runs counter to the need for more public investments—particularly on health, education and infrastructure—to combat poverty and encourage economic development. To reduce the deficit without compromising development spending, government needs to significantly improve tax collection particularly the Bureau of Internal Revenue (BIR) which accounts for about 80% of total tax collection.

Past efforts to reorganize the BIR have proven to be short-lived because they were authorized by mere administrative fiat. At present, the BIR is hampered by at least three fundamental institutional constraints: (a) rigid personnel management system where promotion is based merely on loyalty and seniority rather than exemplary performance (*e.g., exceeding the revenue target*); (b) compensation structure that restricts the hiring of first-rate professionals; and (c) strict line-item budgeting that limits the flexibility in the allocation of funds.

There is an urgent need for Congress to create a Revenue Authority to address the growing taxpayer dissatisfaction particularly over front-line services, high level of tax evasion/avoidance, and increasing perception of systemic corruption in the Bureau. It is expected that the new Authority shall be free from political interference in terms of decisions pertaining to revenue rulings, audit and assessment, personnel management, and budgeting.

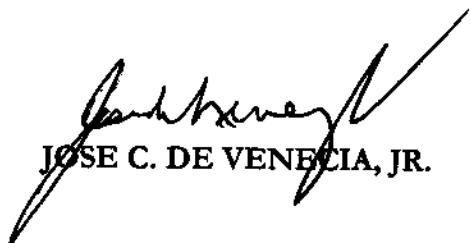
The proposed bill shall have the following salient features:

- (1) The Authority shall be governed by a Revenue Board composed of four representatives from the government and three from the private sector. The government

representatives shall include the heads of the Department of Finance (*as Chairperson*), the Department of Budget and Management, the National Economic Development Authority and the Securities and Exchange Commission. Private sector representatives shall be nominated by peak professional organizations, and appointed by the President of the Philippines. They must be recognized experts in the fields of economics, accounting, law, business management and other allied professions. The members of the Board shall serve for a fixed term of office with different periods of expiry to avoid disruption of services, to prevent abandonment of approved plans/programs and to limit reversal of revenue rulings and regulations.

- (2) The Revenue Authority shall be headed by a Chief Executive Officer (CEO) responsible for the preparation of the following: work program, organizational structure, annual budget, compensation package, and appointment of rank and file employees, among many others. The CEO shall be appointed by the Revenue Board for a period of three years with possible reappointment under a performance-based contract.
- (3) The Authority shall receive an annual service fee of not less than 1% but not more than 2% of total collection of the immediate preceding year, net of local government shares.
- (4) Selection of personnel for the new Revenue Authority shall be strictly based on merit and fitness. An attractive separation/retirement package shall be offered to those who opt not to join the new Authority.

To balance the budget by 2009, it is imperative that tax collection effort significantly improves. In this light, the creation of an independent Revenue Authority should be pursued.



JOSE C. DE VENECIA, JR.

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House Bill No. _____

BY REPRESENTATIVE JOSE C. DE VENECIA, JR.

**AN ACT CREATING THE NATIONAL REVENUE AUTHORITY,
PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES**

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

SECTION 1. *Short Title.* – This Act shall be known and cited as the “National Revenue Authority Act of 2004.”

SEC. 2. *Declaration of Policy.* – It is the policy of the State to reform tax administration to meet the resource needs of government, satisfy the requirements of taxpayers as customers, and help ensure the efficient and effective collection of taxes by the Government. Towards this end, the State shall create an internal revenue agency that shall be endowed with fiscal and administrative powers necessary to discharge its mandate with excellence.

SEC. 3. *Creation of the National Revenue Authority; Corporate Powers.* – There is hereby established a public organization to be known as the National Revenue Authority, hereinafter referred to as the Authority, which shall be responsible for the implementation of internal revenue laws and shall be attached to the Department of Finance (DOF). It shall be organized within one hundred eighty (180) days from the effectivity of this Act.

The Authority shall have its principal place of business in Metro Manila and may establish branches and offices in such other places as may be deemed necessary for the performance of its mandate.

SEC. 4. *Responsibility and Primary Objective.* – The primary responsibility and objective of the Authority is to raise revenues to finance the operations of the Government consistent with fiscal policy and revenue collection targets.

SEC. 5. *Powers and Functions.* – The Authority shall exercise the powers and duties heretofore exercised by the Bureau Internal Revenue under the National Internal Revenue Code of 1997, hereinafter referred to as the Code, and other laws. Such powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees,

and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Authority shall give effect to and administer the supervisory and police powers conferred to the Bureau of Internal Revenue by the Code and other laws.

The officials and employees of the Authority shall be hired on a fixed term performance-based contracts.

In addition, the Authority shall have the following corporate powers: to adopt, alter, and use an official seal which shall be judicially noticed; to enter into contracts; to lease or own real and personal property; and to sell or otherwise dispose of the same; incur obligations necessary in the conduct of its operations; and to perform any and all acts necessary or proper to carry out the purposes of this Act.

The Authority may acquire and hold such assets and incur such liabilities in connection with its operations authorized by the provisions of this Act and other laws, or as are essential to the proper conduct of such operations.

SEC. 6. *Capitalization.* – The Authority shall have an authorized capital of Ten Billion Pesos (PhP 10,000,000,000) which shall be fully subscribed by the Republic of the Philippines and shall be paid up by the transfer to the Authority of assets valued in such amount. Initially, the national government shall transfer to the Authority such assets as may be determined pursuant to Section 19 of this Act.

SEC. 7. *Service Fee.* – The Authority shall receive an annual service fee from the Government for services rendered in the discharge of its mandate. Subject to the recommendation of the Development Budget Coordinating Committee (DBCC) created under E.O. No. 232, s. of 1970, as amended, said fee shall not fall below one percent (1%) nor go beyond two percent (2%) of revenues collected in the immediately preceding calendar year, net of collections accruing to Local Government Units, including Internal Revenue Allotment (IRA), and other agencies: *Provided, however,* That in the initial year of operation, the service fee shall be 2% of net revenues collected in the immediately preceding year. Said amount shall be appropriated in the annual General Appropriations Act.

The Authority shall likewise be entitled to five percent (5%) of annual collections in excess of its annual collection target set by the DBCC: *Provided, however,* That no portion of the performance bonus shall accrue to members of the Revenue Board.

SEC. 8. *Composition of the Revenue Board; Qualifications of Members.* – (a) There is hereby created a Revenue Board, hereinafter referred to as the Board, composed of the Secretary of Finance, as chairperson, and the following as members: the Director-General of the National Economic Development Authority, Secretary of the Budget and Management, and the Chairperson of the Securities and Exchange Commission, all of whom shall serve *ex officio* and with no compensation, and three (3) representatives from the non-government sector to be appointed by the President, who shall serve full-time for a term of three (3)

years, and may be reappointed once: *Provided, however,* That reappointment of representatives from the non-government sector shall follow the nomination process outlined in this Section.

(b) The three members from the non-government sector shall include an economist, an accountant, and a lawyer. Each shall be selected and appointed by the president from a pool of candidates to be nominated by peak professional organizations of economists, accountants, and lawyers, respectively, which must have been in existence for at least ten (10) years. A "peak professional organization" refers to an organization duly recognized by members as representative of, and having the largest active membership in their profession. The mechanics of the nomination process shall be provided for in the Implementing Rules and Regulations for this Act.

(c) Of the initial members appointed from the non-government sector, the first appointee shall serve for three (3) years, the second for two (2) years, and the third for (1) year.

(d) Whenever the chairperson or any of the members serving in *ex officio* capacity is unable to attend a meeting of the Board, the representative shall be an Undersecretary or its equivalent rank: *Provided,* That the highest ranking *ex officio* member present shall preside over the meeting in case the chairperson is absent.

(e) A member from the non-government sector shall be a natural-born citizen of the Philippines, at least forty (40) years of age, of good moral character, known for honesty and patriotism, of unquestionable integrity, and a recognized expert in the field of taxation, fiscal policy, public finance, fiscal administration, accounting, management, or law: *Provided, however,* That such members shall not have been employees of the Bureau of Internal Revenue or the Authority created under this Act within the last ten (10) years prior to their appointment: *Provided, further,* That no person who has been connected as a director, partner, officer, lawyer, accountant, consultant or in any other capacity with individuals, general professional partnerships, or professional corporations who prepare and file tax returns, statements, protests and other papers with, or who appear before, the Authority shall be appointed within one (1) year from the cessation of such connection. An appointment to fill the vacancy created by the death, resignation or removal of a member from the non-government sector shall only be for the unexpired period of such member's term.

(f) The President of the Philippines shall initially fix the compensation of the members from the non-government sector based on an objective classification system, to be specified in the Implementing Rules and Regulations of this Act, at a sum commensurate to the importance and responsibilities attached to the position. The Board may increase such compensation: *Provided, however,* That the increase shall not affect the compensation of a member during whose incumbency the increase was approved for the duration of such member's term.

SEC. 9. *Powers of the Revenue Board.* – The Revenue Board shall:

(a) Adopt and promulgate policies and rules for the effective enforcement of the provisions of the Code, this Act, and other revenue laws;

(b) Upon the recommendation of the CEO, approve the annual and supplemental budget of receipts and expenditures of the Authority, and authorize such operating and capital expenditures of the Authority as may be necessary or proper for the effective management, operation and administration of the Authority;

(c) Form committees, including an executive committee, that shall assist the Board in the performance of its functions: *Provided, however,* That no person shall be appointed to the executive committee who has been employed within the past ten (10) years by the Bureau of Internal Revenue or the Authority created under this Act;

(d) Exercise such powers and perform such other acts as may be necessary, useful, incidental or auxiliary to carry out the provisions of this Act, or to perform the purposes and objectives of this Act.

All references in the Code and other revenue laws, and in the rules and regulations issued thereunder, to the Secretary of Finance shall be deemed to refer to the Revenue Board.

SEC. 10. *Conflict of Interest.* – In addition to the requirements of Republic Act No. 6713, otherwise known as the Code of Ethical Standards, any member of the Board with personal or pecuniary interest in any matter in the agenda of the Board shall disclose such interest to the Board and shall inhibit himself during the deliberations when such matter is taken up. The decision taken on the matter shall be made public and the minutes of the meeting shall reflect the disclosure made and the inhibition of the member concerned.

SEC. 11. *Disqualifications.* – In addition to the disqualification imposed by Republic Act No. 6713, a member of the Board shall be disqualified from being connected as director, partner, officer, lawyer, accountant, consultant or in any other capacity with individuals, general professional partnerships, or professional corporations who prepare and file tax returns, statements, protests and other papers with, or who appear before, the Authority, in which case such member shall terminate his or her association with such individuals and resign from, and divest himself or herself of any and all interests in, such general professional partnerships, or professional corporations.

Members of the Board from the non-government sector shall not hold any other public office or employment during their tenure, unless such office or employment is with a state university or college or is connected with the performance of their duties as members of the Board.

SEC. 12. *Removal of Members from the Non-Government Sector.* – The President may remove any member of the Board from the non-government sector for any of the following reasons:

(a) The member suffers from physical or mental incapacity that renders him or her incapable of properly discharging the duties and responsibilities of membership in the Board and such incapacity has lasted for more than six (6) months; or

(b) The member has committed acts or operations that are shown *prima facie* to be fraudulent or illegal or manifestly opposed to the aims and interests of the Authority;

(c) The member no longer possesses the qualifications specified in Section 8 of this Act; or

(d) The member is subsequently disqualified under the provisions of existing law.

SEC. 13. *Meetings.* – The Board shall meet at least twice a month. The Board may be called to a meeting by the chairperson or by three (3) other members of the Board.

The presence of four (4) members shall constitute a quorum: *Provided*, That in all cases the chairperson or the chairperson's duly designated alternate shall be among the four (4).

All decisions of the Board shall require the concurrence of at least four (4) members.

The Authority shall maintain and preserve a complete record of the proceedings of the Board, including the tapes and transcripts of the stenographic notes, either in their original form, in microfilm, or in any electronic medium.

SEC. 14. *The Chief Executive Officer; Qualifications; Appointment; Term of Office.* – The Authority shall be headed by a Chief Executive Officer, hereinafter referred to as CEO, who shall be a natural-born citizen of the Philippines, of good moral character, known for honesty and patriotism, of unquestionable integrity, with at least seven (7) years experience in management, and a recognized expert in the field of taxation, finance, fiscal administration, economics, public administration or public finance.

The CEO of the Authority shall be appointed by the Board from a list of at least three (3) nominees prepared by a selection committee created by the Board and chaired by a member of the Board, for a term of three (3) years; *Provided*, That the incumbent Commissioner of the Bureau of Internal Revenue as of the date of the approval of this Act shall not be qualified to serve as CEO of the Authority except in a holdover capacity pending the appointment of the CEO. The CEO shall enter into a performance contract with the Board and maybe re-appointed depending on the CEO's performance: *Provided, however*, That no person may be appointed as CEO for more than three (3) terms. In addition to other grounds for removal as may provided for by law, the CEO may be removed by a majority vote of all the members of the Board prior to the end of the CEO's

3-year term for failure to meet commitments in the performance contract, unless such failure is attributable to a cause or causes beyond the CEO's control.

SEC. 15. *Powers and Functions of the CEO.* – The CEO of the Authority shall exercise the powers and functions of the Commissioner of the Internal Revenue under Sections 4, 5, 6, 7, 8, 14, 15, 16, 17, 19, 20, and other provisions of the National Internal Revenue Code of 1997. In addition, the CEO shall:

(a) Execute, administer and implement the policies and measures approved by the Board;

(b) Direct and supervise the operations and administration of the Authority;

(c) Represent the Authority in all dealings with offices, agencies and instrumentalities of the Government and with all persons and entities, public or private, domestic or foreign;

(d) Direct and supervise the preparation of the agenda for the meeting of the Board, and to submit for the consideration of the Board such policies and measures as he or she believes necessary to carry out the purposes and objectives of this Act;

(e) Promulgate, with the approval of the Board, all necessary rules and regulations for the effective enforcement of the provisions of the Code, this Act and other revenue laws;

(f) Determine the organizational structure, including the geographical location of the branches and offices, of the Authority; recognize its personnel; and issue such rules and regulations, as he or she may deem necessary or convenient for these purposes;

(g) Establish a performance-based management system which shall govern the selection, hiring, appointment, transfer, promotion or dismissal of all personnel. Such system shall aim to attract and retain professionally competent, well-trained, honest, courteous and efficient personnel and to establish professionalism and excellence at all levels of the Authority.

All positions in the Authority shall be governed by a compensation and position classification system and qualification standards approved by the Board based on a comprehensive job analysis and audit of actual duties and responsibilities. The Board shall have the authority to establish a compensation plan for the Authority; *Provided, however,* That the total personal services budget of the Authority shall not be more than sixty percent (60%) of its total operating budget.

Appoint, fix the remuneration and other emoluments, and remove personnel of the Authority; *Provided,* That the Board shall have final appellate authority in cases involving promotion, transfer, assignment, or reassignment of personnel of the Authority and these personnel actions are deemed made in the interest of the service and not disciplinary;

(h) Provide for the continuing education and training of Authority officials and employees. For this purpose, the Authority may establish a training institute or enter into agreements with institutions of higher learning in the country for the establishment of training programs for its technical personnel in the field of taxation, tax administration and related fields. The Authority is likewise authorized to defray the costs of study, at home or abroad, of qualified employees of the Authority, of promising university graduates or of any other qualified persons who shall be determined by proper competitive examinations.

(i) To exercise such other powers and functions as may be vested in the CEO by the Board.

The CEO shall have the authority to delegate any of the foregoing powers to such official or officials of the Authority, as he or she may deems necessary.

All references in the Code and other revenue laws, and in the rules and regulations issued thereunder, to the Commissioner of the Internal Revenue shall be deemed to refer to the CEO.

SEC. 16. *Salary of the CEO.* – The Board shall fix the salary of the CEO based on an objective classification system to be specified in the Implementing Rules and Regulations of this Act at a sum commensurate to the importance and responsibilities attached to the position.

SEC. 17. *Indemnification for Legal Defense Costs and Expenses.* – Section 227 of the National Internal Revenue Code is hereby amended to read as follows:

“The National Revenue Authority shall indemnify members of the Revenue Board and other officials of the National Revenue Authority, including personnel of the units performing assessment, audit and collection functions against all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which they may be or made a party by reason of their performance of their functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct.

“In the event of settlement or compromise, indemnification shall be provided only in connection with such matters covered by the settlement as to which the National Revenue Authority is advised by external counsel that the persons to be indemnified did not commit any gross negligence or misconduct.

“The costs and expenses incurred in defending the aforementioned action, suit or proceeding may be paid by the National Revenue Authority in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the member of the Revenue Board, official or employee to repay the amount advanced should it ultimately be determined by the National Revenue Authority that said member of the Revenue Board, official or employee is not entitled to be indemnified as provided in this Section.”

SEC. 18. *Implementing Details.* – The Authority shall be made operational by the performance of the following acts:

(a) The President shall constitute the Revenue Board by appointing the members thereof within one hundred eighty (180) days from the effectivity of this Act; and

(b) The completion of the transfer of such assets and liabilities of the Authority as provided in the succeeding Section.

SEC. 19. *Transfer of Assets.* – (a) Upon the effectivity of this Act, a Committee composed of the Chairperson and *ex officio* members of the Revenue Board and the Chairpersons of the Committees on Ways and Means of the Senate and the House of Representatives shall determine the assets of the Bureau of Internal Revenue which shall be transferred to the Authority. The Committee shall hire the services of an independent appraiser to determine the value of the assets to be transferred to the Authority.

(b) The Committee shall complete its work within ninety (90) days from the constitution of the Board. It shall submit a comprehensive report of its findings and justifications to Congress and the President within fifteen (15) days from the completion of its work.

SEC. 20. *Mandate to Organize.* – (a) The Authority shall be organized by the Board, by adopting if it so desires, an entirely new organizational structure or staffing pattern to suit the operations of the Authority under this Act. No preferential or priority right shall be given to or enjoyed by any personnel for appointment to any position in the new staffing pattern, nor shall any personnel be considered as having prior or vested rights with respect to retention in the Authority or in any position which may be created in the new staffing pattern, even if such personnel should be the incumbent of a similar position prior to organization. Selection shall be based strictly on merit and fitness and applicants may likewise be subject to lifestyle checks to ensure their suitability for appointment to the new organization. The formulation of the program of organization shall be completed within six (6) months after the effectivity of this Act, and shall be fully implemented within a period of six (6) months thereafter, both of which periods shall be collectively referred to as the transition period. Personnel who may not be retained are deemed separated from the service.

(b) Subject to the preceding paragraph and to minimize the disruption of internal revenue administration during the transition period, all incumbent personnel in the Bureau of Internal Revenue as of the date of the approval of this Act shall continue to exercise their duties and functions as personnel of the Authority. To help ensure that revenue targets are met during the same period, and in addition to the provisions of Section 285 of the National Internal Revenue Code, an additional amount equivalent to five percent (5%) of the excess in collection targets for the said period shall be used to pay separation benefits authorized under the succeeding Section and shall likewise be treated as receipts appropriated for this purpose. Towards the same end, the hiring of auditors, suspension of assessments,

institution of voluntary assessment programs, and similar measures are hereby authorized during the transition period to augment revenue collection.

SEC. 21. *Separation Benefits.* – The officials and employees of the former Bureau of Internal Revenue who are separated from the service as result of the organization of the Authority shall be allowed to retire or be separated from the service under existing laws: *Provided*, That in no such case shall any employee displaced or separated from the service as a result of this Act, shall receive less than One Hundred Thousand Pesos (Php 100,000.00) as separation benefit. The methodology that shall govern the implementation of the said program shall be provided in the IRR.

SEC. 22. *Transfer of Powers.* – All powers, duties and functions bested by law in the Bureau of Internal Revenue shall be deemed transferred to the Authority. The powers, duties and functions vested by the National Internal Revenue Code of 1997 and other revenue laws in the Deputy Commissioners, Service Chiefs, Assistant Service Chiefs, Revenue Regional Directors, Assistant Revenue Regional Directors, Chiefs and Assistant Chiefs of Divisions, Revenue District Officers, special deputies of the Commissioner, internal revenue officers and other employees of the Bureau of Internal Revenue shall be deemed transferred to the officers and employees of the Authority who are appointed to exercise the same powers, duties and functions as the abovementioned Bureau of Internal Revenue officers and employees: *Provided, however*, That pursuant to the power of the CEO to determine the organizational structure of the Authority and to reorganize its personnel under Section 11 of this Act, the positions and bodies mentioned in Sections 7, 9, 10, 11, 13, 14, 15, 51(B), 58(A), 77((A), 81, 90(D), 95, 103(B), 114(B), 128(B), 130(A)(3), 130 (A)(4)(b), 163, 164, 16, 171, 172, 196, 200(C), 202, 204, 206, 207(A), 207(B), 209, 213, 214, 215, 227, 236(A), 236(B), 236(E), 236(F), 236(G), 236(J), 241, 242, 245(a), 245(e), 245(j), 248, and 271 of the National Internal Revenue Code of 1997 may be changed, abolished, combined with another position or body, or substituted with another and the powers and functions granted by these provisions to said positions and bodies may be performed by such officials or employees deemed appropriate by the CEO: *Provided, further*, That for purposes of applications for abatement, cancellation, and compromise under Section 204 of the Code, the Revenue Board shall be authorized to fix the terms and conditions, including the levels of approving authority and the creation of committees to process said applications.

All references to the Bureau of Internal Revenue in the National Internal Revenue Code of 1997 and other revenue laws, and in the rules and regulations issued thereunder shall be deemed to refer to the National Revenue Authority.

SEC. 23. *Applicability of Prohibitions and Sanctions; Administrative Complaints.* – The penalties imposed on officials, agents or employees of the Bureau of Internal Revenue who are guilty of the offenses enumerated in the National Internal Revenue Code of 1997 and other criminal statutes shall be applied to members of the Revenue Board and officials, agents and employees of the Authority who are found guilty of such offenses.

For purposes of administrative complaints against officers and employees of the Authority, an internal audit unit to be created by and reporting directly to the Board shall

conduct the investigations on such complaints. For this purpose, such internal audit unit shall be deemed deputized by the Office of the Ombudsman under Republic Act No. 6770.

SEC. 24. *Repealing Clause.* – The provisions of Sections 18, 19, 20, 21 and 22 of Chapter 4, Title II, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, are hereby repealed. The provisions of Title I of the National Internal Revenue Code of 1997 insofar as they are inconsistent with the provisions of this Act, are hereby repealed or amended accordingly. The other provisions of the Code, including Sections 51(B), 58(A), 77(A), 81, 90(D), 95, 103(B), 114(B), 128(B), 130(A)(3), 130(A)(4)(b), 163, 164, 166, 171, 172, 196, 200(C), 202, 204, 206, 207(A), 207(B), 209, 213, 214, 215, 227, 236(A), 236(B), 236(E), 236(F), 236(G), 236(J), 241, 242, 245(a), 245(e), 245(j), 248, 271, and 285 are hereby amended, and those other laws, rules and regulations in consistent with this Act are hereby repealed or modified accordingly.

SEC. 25. *Separability Clause.* – If any provision or section of this Act is held invalid, the other provisions and sections not affected thereby shall remain in full force and effect.

SEC. 26. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

Approved.