

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

FIFTEENTH (15TH) CONGRESS
First Regular Session

HOUSE BILL NO. **4483**

Introduced by **HON. RENE LOPEZ RELAMPAGOS**
1st District, Bohol

EXPLANATORY NOTE

This bill seeks to strengthen and reform the financial and economic governance, capacity development and financial performance monitoring of government-owned or controlled corporations.

Under the second sentence of Section 16, Art. XII (National Economy and Patrimony of the 1987 Constitution), "Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability." As commented by the eminent Constitutionalist Fr. Joaquin G. Bernas, S.J., in his book, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2009 edition, p. 1227), the "second sentence was added by the 1986 Constitutional Commission." The significant addition, however, is the phrase "in the interest of the common good and subject to the test of economic viability." The addition includes the ideas that they must show capacity to function efficiently in business and that they should not go into activities which the private sector can do better. Moreover, economic viability is more than financial viability but also includes capability to make profit and generate benefits not quantifiable in financial terms. (III RECORD 623-630; IV RECORD 230-233 [Constitutional Commission])

The Administrative Code of 1987 (Executive Order No. 292) refers a government-owned or controlled corporation (GOCC) "to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations."

The Asian Development Bank (ADB) - of which the Philippines is one of its members in its Technical Assistance Report (Project Number: 39606, June 2006) entitled: *Republic of the Philippines: Government-Owned and Controlled Corporations Reform*, stated, among others, that the Government of the Philippines (Government) requested technical assistance (TA) from the ADB to improve the Government's monitoring and management of GOCCs. This is a priority undertaking that would help achieve fiscal consolidation, and the TA was consequently added to the ADB nonlending program of the country strategy and program for 2005-2007. The Fact-Finding Mission was fielded on 15-19 November 2005 and agreement was reached with the Government on TA's purpose, scope, implementation mechanisms and financing arrangements.

In the same TA Report, the following issues were established to which this representation fully agrees:

a) Philippine GOCCs were created in one of three (3) ways: by special laws, by the corporation code (Batas Pambansa Big. 68, as amended) or by judicial decisions. In general, the mandate of individual GOCCs involves either socially-oriented responsibilities or the provision of basic services, such as transport, water, power, housing and a stabilized food supply. They are also engaged in developmental and pioneering activities, including financing. The Department of Finance (DOF) estimates there are seven hundred thirty six (736) GOCCs. The definition of a GOCC remains very complicated, as defined by legislative fiat, presidential decrees and administrative orders. (Such as Republic of the Philippines, 1988. Rationalizing the Government Corporate Sector. *Administrative Order*. Manila [AO 59, Series of 1988] ; and Presidential Decree No. 2029, Series of 1986 on Acquired Assets, among others.)

The 736 GOCCs include (i) those created by judicial decision (e.g., local water districts); (ii) assets sequestered during the Marcos administration; (iii) assets acquired by government corporations; and (iv) those created via legislative charters.

b) The DOF was charged with monitoring the financial performance of all GOCCs. (Under Executive Order 127-A3 [1987] and Administrative Order No. 163 [2001]) Effectively, however, only fourteen (14) corporations are closely monitored, due to their heavy dependence on the national Government for financial support, either (i) directly through equity, subsidy or advances for debt servicing or (ii) indirectly through national Government guarantee of their obligations. These 14 GOCCs also account for a substantial portion of the consolidated public sector deficit. The 14 monitored GOCCs are Home Guaranty Corporation, Light Rail Transit Authority, Local Water Utilities Administration, Manila Waterworks and Sewerage System, National Development Corporation, National Electrification Administration, National Food Authority, National Housing Authority, National Irrigation Authority, National Power Corporation [by virtue of the Electric Power Industry Reform Act, the Power Sector Assets and Liabilities Management Corporation and the National Transmission Corporation are added to the list], Philippine Ecozone Authority, Philippine National Oil Corporation, Philippine National Railway and Philippine Ports Authority.

In general, the DOF's monitoring involves tracking of the financial performance of the 14 major corporations and their debt obligations. In addition, the DOF, through its Corporate Affairs Group, reviews the financial viability of the GOCCs as well as their project, loan and guarantee proposals. The DOF is expanding its monitoring beyond the 14 major GOCCs to include other corporations that may pose problems for the national Government. The requests from the additional GOCCs for direct and indirect national Government support form the basis for their financial performance monitoring. Inasmuch as the 14 major corporations comprise the substantial portion of the assets and liabilities of the government corporate sectors, the consolidated financial performance of these major corporations provides an indication of the aggregate financial performance of the government corporate sector. Notwithstanding, there remains a need for regular monitoring of government corporations outside of the 14 major GOCCs.

c) Most GOCCs are incurring significant financial losses. Budgetary support to the total Government corporate sector (including government financial institutions, social security institutions and GOCCs providing goods and services to the public) amounted to P80.4 billion during 2000-2004. In addition, indirect support, in the form of guarantees on GOCC obligations, is also in the billions of pesos. In the past years five (5) years, there has been a noticeable increase in the aggregate deficit of the 14 monitored GOCCs, bringing their financial viability into question. While the 14 monitored GOCCs' current and capital expenditures fluctuated around 6% of GDP, revenues have fallen from 5% to 4.1% of GDP over 2000-2004, increasing the deficit of the monitored GOCCs from 0.6% to 1.8% of GDP over the same period. In 2004,

the monitored GOCCs' consolidated deficit was P85.4 billion, a more than fourfold increase from the 2000 level of P19.2 billion. The 2004 deficit is already about the same size as the potential new revenues collected through the expanded value-added tax law. There are various reasons for the ballooning GOCC deficits, including (i) failure to adjust tariff rates, (ii) large capital requirements and (iii) operational and management inefficiencies. The system used by the DOF to report on and supervise the GOCCs needs to be reviewed to determine why the deficits ballooned significantly in the past few years, and why the oversight mechanisms have failed to reverse this trend. In the past 5 years, the National Power Corporation has contributed significantly to the overall deficit of GOCCs. Reforms under the Power Sector Development Program supported by the ADB are ongoing to address this issue. Reforms specific to the National Power Corporation are not covered by this TA.

There is also a need to (i) examine the sources of the ballooning GOCC deficits, given the diverse nature of the operations and services they provide; and (ii) find long-term solutions to improve their viability as government corporations, and possibly suggest privatization programs in some cases.

d) The significant financial losses of the GOCCs contribute to the public sector debt. The contribution of the monitored GOCCs' debt stock to total public sector debt has been high and increasing over the past 5 years, from 30.9% of the total public sector debt in 2000 to 32.7% in 2003, with a slight decline to 29.3% in 2004. The increasing need for deficit financing will continue to put pressure on the GOCC debt stock to rise, which would in turn add to the already high levels of total public sector debt. The national Government's combined outstanding debt and estimated off-balance-sheet outstanding liabilities increased by P2.4 trillion from 1997 to 2003. According to a recent study, nearly half of the increase is attributable to GOCC activities, both on-and off-balance sheet. (ADB 2005, *Putting GOCCs on Sound Footing: The Transformation Agenda*. ADB Discussant Document. McKinsey & Company, 2 August 2005.) This situation makes fiscal consolidation much more challenging for the Government. ADB's Philippine country strategy and program for 2005-2007 acknowledges these challenges, and make support for fiscal consolidation a priority. In this context, the Government has requested ADB assistance to support GOCC reform.

e) The TA supports a core element of the Government's reform agenda. It complements another ADB TA on debt and risk management as well as activities of other development partners, including the World Bank, the Australian Agency for International Development and the United States Agency for International Development. (ADB, 2005, *Technical Assistance to the Republic of the Philippines for Debt and Risk Management*. Manila [TA 4717-PHI, for US\$720,000.00, approved on 7 December 2005])

The World Bank is providing complementary support to the DOF for contingent liability management. The United States Agency for International Development is helping the DOF Privatization Office prepare a comprehensive inventory of GOCC and Government assets and develop guidelines for identifying and prioritizing assets and GOCCs for privatization. The Australian Agency for International Development, through the Partnership for Economic Governance Reforms facility, is supporting the DOF's program of governance for the GOCCs. ADB has worked closely with development partners in the preparation of the TA, and will continue to do so during the implementation process to ensure an efficient and effective use of resources. The DOF will manage the ongoing interventions and ensure that development partners will coordinate their GOCC strengthening and reform efforts.

Last September 8, 2010, President Benigno S. Aquino III issued Executive Order No. 7 "directing the rationalization of the compensation and position classification system in the government-owned-and-controlled corporations (GOCCs) and government financial institutions (GFIs) and for other purposes." Section 9 of said Executive Order No.7 imposes the moratorium on increases in the rates of salaries and the grant of new increases in the rates of allowances.

incentives and other benefits, except salary adjustments pursuant to Executive Order No. 8011 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010, until specifically authorized by the President. Section 10 of the same Executive Order suspends the grant of allowances, bonuses, incentives and other perks to members of the board of directors/trustees of GOCCs and GFIs, except reasonable per diems, until December 31, 2010, pending the issuance of new policies and guidelines on the compensation of these board of directors. On December 30, 2010, President Aquino issued Executive Order No. 19 extending the extension of suspension of the grant of allowances, bonuses, incentives and other perks to members of the board of directors/trustees of GOCCs and GFIs, except reasonable per diems, until January 31, 2011, pending the issuance of new policies and guidelines on the compensation of said directors/trustees.

The above issues raised by the ADB are confirmed by the Senate. In his opening statement, Senator Franklin M. Drilon at the Senate Committee Hearing of Senate Bill No. 2566 (proposed "GOCC Governance Act of 2010") stated that:

"In the course of this Committee's inquiry pursuant to PSR No. 66 on the compensation in Government-Owned and -Controlled Corporations (GOCCs), we confirmed that members of the Board of Directors of certain GOCCs have allocated for their benefit bonuses that went as high as the equivalent of twenty-six (26) months, notwithstanding the poor financial condition of these enterprises."

It was also shown during the hearings that COA-independent GOCC's such as the Manila Economic and Cultural Office (MECO) established excessively generous retirement schemes that granted P600, 000 for every year in service to Directors who have served at least two (2) years. Additionally, Trustees of Pension Fund agencies have, throughout the years, impudently received from investee corporations hundreds of millions worth of stock option plans and profit share denominated as Directors Fees, in clear violation of their fiduciary duty as trustees of the pension fund.

This Committee was also informed by the Department of Budget and Management (DBM) that most of the corporate operating budgets (COB's) of GOCC's which incidentally account for one-third (1/3) of the national expenditures for salaries and maintenance and other operating expenses, have not been dutifully submitted to the DBM for review. In addition, we lamented the discovery that GOCC subsidiaries, which further drain public funds, have been rashly created and local banks audaciously purchased despite the absence of requisite approvals from monitoring government agencies.

Finally, there are other issues that are tangent to the subject at hand: (1) the often ridiculed politicized appointment of less than qualified individuals to policy-making posts in GOCCs; (2) the clamor for the abolition of non-performing and obsolete public enterprises; (3) poor corporate governance environment; and (4) weak oversight system. On the basis of the data gathered in the course of our hearings conducted by this Committee in aid of legislation, pursuant to PSR No. 66, we have filed Senate Bill No. 2566 (or the proposed GOCC Governance Act), which seeks to

address these concerns by introducing reforms in this sector of governance."

Among the purposes of the bill is the improvement of corporate governance in GOCCs by (a) setting a just and equitable compensation system at reasonable levels that takes into account the results of operations of GOCCs and offers enough incentives to attract the best talents to manage these enterprises; (b) introducing a transparent process for the selection of board members that ensures qualifications and expertise; (c) creating a more effective oversight mechanism through the GOCC Council for Governance (GCG); and (d) introducing a performance evaluation system to help assess and evaluate the effectiveness and efficiency of GOCCs, enabling the GCG to make recommendations, when necessary, for their reorganization, streamlining, merger, abolition or privatization. These recommendations will be submitted to the President, who shall be vested with the delegated authority based on a set of reasonable standards, to undertake the reorganization of the GOCCs.

The welfare of the employees in GOCCs will be protected and even advanced as the bill ensures that no diminution of their salaries will be allowed. Through this measure, it is our hope that the GOCCs will become a significant tool for economic development instead of a burden upon the government's resources.

This bill adopts some provisions of SB No. 2566 of Sen. Franklin Drilon and is a counterpart of said SB No. 2566. The instant bill will effectively address the above issues raised by the ADB on the GOCC's problematic governance, effectiveness and efficiency due to weaknesses in the institutional and regulatory frameworks, low capacity and inadequate coordination of GOCCs working on the same sector and resulting in most GOCCs incurring financial losses, which had to be covered by the budget directly (e.g. subsidies) or indirectly (e.g. credit guarantees). This bill will also address the rationalization and position classification system in the GOCCs and GFIs where there must be transparency, accountability and prudence in government spending as they are the core governance policies of the present administration including the need to strengthen the supervision over the compensation levels of GOCCs and GFIs, in order to control the grant of excessive salaries, allowances, incentives and other benefits.

Hopefully, SB 2566 and the instant bill which are same-subject bills will be passed by both chambers of Congress.

In view of the foregoing, the immediate passage of this bill is earnestly requested.

RENE L. RELAMPAGOS

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

**Fifteenth Congress
First Regular Session**

HOUSE BILL NO. 4483

**Introduced by HON. RENE LOPEZ RELAMPAGOS
1st District, Bohol**

**AN ACT
TO STRENGTHEN AND REFORM THE FINANCIAL AND ECONOMIC
GOVERNANCE, CAPACITY DEVELOPMENT AND FINANCIAL PERFORMANCE
MONITORING OF GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS
AND FOR OTHER PURPOSES**

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

SECTION 1. Title. - This Act shall be known as the "Government - Owned or Controlled Corporation (GOCC) Governance Reform Act."

CHAPTER I

General Provisions

SEC. 2. FINDINGS. - The Congress finds the following:

(1) Sometime in the first quarter of 2006, the Philippine government requested technical assistance (TA) from the Asian Development Bank (ADB) - of which the Philippines is one of its members - to improve its monitoring and management of GOCCs. This is a priority undertaking that would help achieve fiscal consolidation, and the TA was consequently added to the ADB nonlending program of the country strategy and program for 2005-2007. The primary objective of the TA is to support the government's fiscal consolidation through reforms in the monitoring and financial performance of the GOCCs. The technical assistance covered the (i) identification of areas for improvement in the operations of GOCCs to enhance their financial performance and reduce their dependence on the national government; (ii) development of evaluation criteria, targets and guidelines for GOCCs; and (iii) strengthening of financial performance review and monitoring of the GOCCs as well as the improvement of the Department of Finance's (DOF) data banking system for the GOCCs.

(2) In the ADB TA's report (Project Number: 39606, June 2006) entitled: Republic of the Philippines: Government - Owned and - Controlled Corporations Reform, the following issues were raised:

a) Philippine GOCCs were created in one of three (3) ways: by special laws, by the corporation code or by judicial decisions. In general, the mandate of individual GOCCs involves either socially-oriented responsibilities or the provision of basic services, such

as transport, water, power, housing and stabilized food supply. They are also engaged in developmental and pioneering activities, including financing.

b) The DOF estimates that there are seven hundred thirty six (736) GOCCs. The definition of a GOCC remains very complicated, as defined by legislative fiat, presidential decrees and administrative orders.

c) The 736 GOCCs include (i) those created by judicial decision (e.g. local water districts), (ii) assets sequestered during the Marcos administration, (iii) assets acquired by government corporations; and (iv) those created via legislative charters.

d) The DOF was charged with monitoring the financial performance of all GOCCs under Executive Order 1270A3 [1987] and Administrative Order No. 163 [2001]. Effectively, however, only fourteen (14) corporations are closely monitored due to their heavy dependence on the national government for financial support, either (i) directly through equity, subsidy or advances for debt servicing or (ii) indirectly through national government guarantee for their obligations. These 14 GOCCs account for a substantial portion of the consolidated public sector deficit. The 14 monitored GOCCs are Home Guaranty Corporation, Light Rail Transit Authority, Local Water District Administration, Manila Waterworks and Sewerage System, National Development Corporation, National Electrification Administration, National Food Authority, National Housing Authority, National Irrigation Authority, National Power Corporation (by virtue of the Electric Power Industry Reform Act, the Power Sector Assets and Liabilities Management Corporation and the National Transmission Corporation are added to the list), Philippine Ecozone Authority, Philippine National Oil Corporation, Philippine National Railway and Philippine Ports Authority.

e) In general, the DOF's monitoring involves tracking of the financial performance of the 14 major corporations and their debt obligations. In addition, the DOF, through its Corporate Affairs Group, reviews the financial viability of the GOCCs as well as their project, loan and guarantee proposals. The DOF is expanding its monitoring beyond the 14 major GOCCs to include other corporations that may pose problems for the national government.

(f) The requests from the additional GOCCs for direct and indirect national government support form the basis for their financial performance monitoring. Inasmuch as the 14 major corporations comprise the substantial portion of the assets and liabilities of the government corporate sectors, the consolidated financial performance of these major corporations provides an indication of the aggregate financial performance of the government corporate sector. Notwithstanding, there remains a need for regular monitoring of government corporations outside of the 14 major GOCCs.

(g) Most GOCCs are incurring significant financial losses. Budgetary support to the total government corporate sector including government financial institutions, social security institutions and GOCCs providing goods and services to the public amounted to P80.4 billion during 2004. In addition, indirect support in the form of guarantees on GOCC obligations, is also in the billions of pesos.

(h) In the past five (5) years, there has been a noticeable increase in the aggregate deficit of the 14 monitored GOCCs bringing their financial viability into question. While the 14 monitored GOCCs' current and capital expenditures fluctuated around 6% of GDP, revenues have fallen from 5% to 4.1% of GDP during 2000-2004, increasing the deficit of the monitored GOCCs consolidated deficit to P85.4 billion, a more than fourfold increase from the 2000 level of P19.2 billion. The 2004 deficit is already about the same size as the potential new revenues collected through the expanded value-added tax law.

(i) There are various reasons for the ballooning GOCC deficits, including (i) failure to adjust tariff rates, (ii) large capital requirements and (iii) operational and management inefficiencies. The system used by the DOF to report on and supervise the GOCCs needs to be reviewed to determine why the deficits ballooned significantly in the past few years, and why the oversight mechanisms have failed to reverse this trend. In the past 5 years, the National Power Corporation has contributed significantly to the overall deficit of the GOCCs. Reforms under the Power Sector Development Program supported by the ADB are ongoing to address this issue. Reforms specific to the National Power Corporation are not covered by this TA.

(j) There is also a need to (i) examine the sources of the ballooning GOCC deficits, given the diverse nature of their operations and the services they provide and (ii) find long-term solutions to improve their viability as government corporations, and possibly to suggest privatization programs in some cases.

(k) The significant financial losses of the GOCCs contribute to the public sector debt. The contribution of the monitored GOCCs' debt stock to total public sector debt has been high and increasing over the past 5 years, from 30.9% to the total public sector debt in 2000 to 32.7% in 2003, with a slight decline to 29.3% in 2004. The increasing need for deficit financing will continue to put pressure on the GOCC debt stock to rise, which would in turn add to the already high levels of total public sector debt. The national government's combined outstanding debt and estimated off-balance-sheet outstanding liabilities increased by P2.4 trillion from 1997 to 2003. According to a recent study, nearly half of the increase is attributable to GOCC activities, both on-and off-balance sheet. The situation makes fiscal consolidation much more challenging for the government. ADB's Philippine country strategy and program for 2005-2007 acknowledges these challenges and makes support for fiscal consolidation a priority. In this context, the government has requested ADB assistance to support GOCC reforms.

SECTION 3. Definition of Terms. -

(1) "Affiliate" refers to a corporation fifty percent (50%) or less of the voting stock of which is owned or controlled, directly or indirectly, by the government-owned or controlled corporation.

(2) "Appointive Director" refers to:

a) In the case of government - owned or controlled corporation created by a special law or charter, all members of its Board of Directors/Trustees/Commissioners who are not **ex-officio** members thereof; and

b) In the case of government - owned or controlled corporation created under the Corporation Code of the Philippines, members of its Board of Directors/Trustees/Commissioners whom the Government of the Philippines is entitled to nominate, to the extent of its percentage shareholdings in such government-owned or controlled corporation.

(3) "Board of Directors/Trustees/Commissioners" or "Board" refers to the governing body that exercises the corporate powers of a government-owned or controlled corporation.

(4) "Charter Statement" refers to the statement of the government-owned or controlled corporation's mission, vision, objectives and core values.

(5) "Chartered GOCC" refers to a government-owned or controlled corporation, including government financial institutions, created and vested with functions by a special law.

- (6) "Chief Executive Officer" refers to the President or the General Manager or the Administrator of a government-owned or controlled corporation who possesses the proper Career Executive Service Officer (CESO) rank conferred by the President of the Philippines.
- (7) "Corporate Governance" refers to a set of principles and standards derived from law, regulation and proper corporate practices that enables the corporation to attract financial and human capital, perform efficiently, thereby generating long-term and desirable economic value for the State.
- (8) "Department" refers to an executive department created by law for the functional distribution of the work of the President of the Philippines.
- (9) "Fit and Proper Rule" refers to the standard for determining whether a member of the Board of Directors/Trustees/Commissioners or Chief Executive Officer as defined under paragraph (6) of this Section is fit and proper to hold a position in a government-owned or controlled corporation, which shall include but not limited to, standards on integrity, experience, education, training and competence.
- (10) "Government Agency" refers to any of the various units of the Government of the Republic of the Philippines, including a department, bureau, office, instrumentality or government-owned or controlled corporation or a local government or a distinct unit therein.
- (11) "Government-Owned or Controlled Corporation (GOCC)" refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature and owned by the Government directly or through its instrumentalities either wholly or where applicable as in the case of stock corporations, to the extent of at least fifty-one percent (51%) of its capital stock.
- (12) "Non-chartered GOCC" refers to a GOCC organized and operating under Batas Pambansa Bilang 68 or The Corporation Code of the Philippines.
- (13) "Officer" refers to a person in the corporation, whose duties, not being of a clerical in nature, involves the exercise of discretion in the performance of functions such as to manage the day to day operations of the GOCC as provided in its charter or by-laws, such as but not limited to, the Chief Executive Officer, President, Vice President, General Manager, Treasurer and Corporate Secretary.
- (14) "Performance Scorecards" refer to a governance and management tool consisting of a set of measures, targets and initiatives that facilitate the achievement of breakthrough results and performance through the effective and efficient monitoring and coordination and the strategic objects of the GOCC.
- (15) "President" refers to the President of the Republic of the Philippines.
- (16) "Related Corporation" refers to a subsidiary or affiliate of a GOCC.
- (17) "Secretary" refers to the person vested with the authority and responsibility to exercise the mandate of the Department under the Executive Branch, for the discharge of its powers and functions, and who shall have supervision and control of the Department.
- (18) "Strategy Map" refers to an integrated set of strategic choices or objectives drawn by the governing body, the successful execution of which results in the achievement of the GOCC's mission, vision and objectives in relation to the purpose for which it is created.

(19) "Subsidiary" refers to a corporation more than fifty percent (50%) of its voting stock is owned or controlled, directly or indirectly through one or more intermediaries, by the GOCC.

SECTION 4. Coverage. - This act shall be applicable to all GOCCs regardless of classification but shall exclude the Bangko Sentral ng Pilipinas being a constitutionally-mandated agency.

CHAPTER II

The Governance Council for Government-Owned or Controlled Corporations ("GCG")

SECTION 5. Creation of Governance Council for Government-Owned or Controlled Corporations. - An advisory, monitoring, recommendatory and policy-enforcing body to be known as the Governance Council for Government-Owned Or Controlled Corporations, hereinafter referred to as the GCG and attached to the Office of the President of the Philippines, is hereby created. The GCG shall be constituted by the President within thirty (30) days from the effectivity of this Act.

SECTION 6. Composition of the GCG. - The GCG shall be composed of five (5) members with the Secretary of the Department of Finance (DOF) as ex-officio Chairman, the Secretary of the Department of Budget and Management (DBM) and the Director-General of the National Economic Development Authority (NEDA) as ex-officio members and two (2) representatives from the private sector.

The two (2) representatives from the private sector shall be appointed by the President, upon the joint recommendation of the DOF, DBM and NEDA from a list of at least five (5) nominees. They must be natural born citizens of the Philippines with recognized competence in the areas of corporate governance, policy administration, business management, human resources management, financial management, economics and other related fields. They shall serve as GCG members for a period of three (3) years, with reappointment upon the discretion of the President. Provided, That of the representatives from the private sector first appointed, one (1) shall serve for two (2) years and one (1) shall serve for three (3) years, and thereafter every representative so appointed shall serve for three (3) years.

SECTION 7. Powers and Functions of the GCG. - The GCG shall have the following powers and functions:

(1) Adopt within ninety (90) days from its constitution, an ownership and operations manual governing GOCCs. Said manual shall be consistent with the Medium Term Philippine Development Plan which shall include:

- a) Objectives of State ownership;
- b) Role of national government in the governance of GOCCs;
- c) Modes of implementation of the ownership policy;
- d) Guidelines on the monitoring of the operations of all GOCCs including their Related Corporations. These shall include Strategy Maps, Charter Statements, Performance Commitments and such other mechanisms;
- e) The roles, relationships and responsibilities of the State, the government agencies to which the GOCC is attached, and the GOCC;
- f) Disclosure and transparency requirements;
- g) Code of Ethics of the Corporate Directors and Officers;
- h) Creation of board committees and similar oversight bodies;

- i) Integrated corporate reporting system;
- j) Statement of the social responsibilities of the GOCC; and
- k) Such other matters as the GCG may deem proper to include in the ownership policy.

(2) Identify the necessary skills, qualifications, training, responsibilities and accountabilities required for Appointive Directors/Trustees/Commissioners and recommend to the President a shortlist of suitable and qualified candidates for Appointive Directors;

(3) Make key recommendations on the following:

a) Improving Corporate Governance through (a) further clarifying/emphasizing the role of the government as mainly that of the "owner" and (b) updating charters of key GOCCs which, by and large are outdated. This is essential to minimize external political as well as bureaucratic interventions and to ensure that the mandates of concerned GOCCs are current/relevant and conflicting and multiple objectives are minimized. In case a GOCC is required to provide a particular "social service," it should be so recognized and funded in a transparent manner and (c) rationalize the structure and composition of the Board of Directors/Trustees/Commissioners to ensure adequate outside representation of technical professionals and stakeholders and also, to introduce a transparent process for the selection of board members that ensures qualifications and expertise, possibly through the establishment of an independent professional body; and

b) Rationalization of GOCC Portfolio. The government has a long standing policy under Proclamation 50 defining under what circumstances a corporation should be in the public sector. In line with this policy, a GOCC should be disposed off if it does not have a clear rationale on the basis of a careful analysis of its social and /or public good role. In this case, it is important to differentiate between the need to provide a public good and who should provide it. The driving force behind this decision should be the government's already stated policy to have a GOCC only in cases where the private sector is not able or willing to provide such goods or services. If full cost recovery is not possible, subsidies can be provided but to the extent possible, actual delivery of goods and services should be left to the private sector in order to minimize cost to the government by leveraging the private sector's flexible and efficient operating capacity. The government should expedite the privatization/disposal program for the GOCCs that have been selected for disposal for quite some time;

(4) Conduct periodic study, evaluation and assessment of the financial performance and operations of the GOCCs, receive, and in appropriate cases, require reports on the operations and management of the GOCCs, including but not limited to, the management of the assets, finances and liabilities of the GOCCs;

(5) Determine the magnitude of existing government exposure to the GOCC, in terms of budgetary support and guarantee exposure;

(6) Determine potential government exposure and the increasing involvement of the GOCC in private sector activities;

(7) Perform an in-depth review of the organization, operations policies and procedures of the GOCC in order to identify gaps, weaknesses and recommendations that will have immediate financial impact on the GOCC. These impacts include improvements in its financial position and reduction, if not total elimination, of its dependence on direct or indirect financial support from the national government, without need for legislation, immediate major government policy shifts or sector reforms;

(8) Make specific recommendations and/or actions on operational efficiency, inventory management and control, asset and liability management, financial restructuring and other issues that have substantial impact on the financial position of the GOCC. The recommendations will include identification of performance criteria, targets and the corresponding incentive and/or reward and penalty mechanisms to arrive at a workable performance contract between the GOCC and the oversight agency;

(9) Identify key legislation, major policy shifts and sector reforms needed in the medium term for GOCC development and effectiveness;

(10) Review the mandates of the GOCC, of its roles as providers of public goods vis-a-vis the roles of the national and local government or private sector, and the necessary dispositive actions, as applicable;

(11) Evaluate the performance and determine the relevance of the GOCC, and recommend to the President, the reorganization, merging, streamlining, abolition or privatization of the GOCC. For this purpose, the GCG shall be guided by the following:

- a) The functions or purpose for which the GOCC was created are no longer relevant to the State or no longer consistent with the national development policy of the State;
- b) The GOCCs' functions or purpose duplicate or unnecessarily overlap with functions, programs, activities or projects already provided by a government agency; or
- c) The GOCC is not producing the desired outcomes or no longer achieving the objectives and purposes for which it was originally designed and implemented, and/or not cost efficient and does not generate the level of social, physical and economic returns vis-à-vis the resource inputs.

Upon determination by the GCG that it is to the best interest of the State that a GOCC should be reorganized, merged, streamlined, abolished or privatized, it shall make its recommendation to the President. The President may, upon confirmation of the findings of the GCG, order the filing of a bill to be certified by the Office of the President for the reorganization, merging, streamlining, abolition or privatization of such GOCC.

Any such reorganization, merger, streamlining, abolition or privatization must be completed on or before June 30, 2015;

(12) Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable;

(13) Provide technical advice and assistance to the government agencies to which the GOCCs are attached in setting performance objectives and targets for the GOCCs and in monitoring GOCCs performance vis-à-vis set objectives and targets;

(14) Coordinate and monitor the operations of GOCCs, ensuring alignment and consistency with the national development policies and programs. It shall meet at least quarterly to:

- a) Review Strategy Maps and Performance Scorecards of all GOCCs;
- b) Review and assess existing performance-related policies including the compensation and/or remuneration of the Board of Directors/Trustees/Commissioners and Officers and recommend appropriate revisions and actions; and

- c) Prepare performance reports of the GOCCs for submission to the President;
- (15) Prepare a semi-annual progress report to be submitted to the President and Congress. In its report, the GCG will provide its performance assessment of the GOCCs and recommend clear and specific actions. Within one hundred twenty (120) days from the close of the calendar year, the GCG shall prepare an annual report on the performance of the GOCCs and submit it to the President and the Congress;
- (16) Review proposals by government agencies for the creation of a GOCC or Related Corporation under the Corporation Code of the Philippines and recommend to the President the approval or disapproval of the same; and
- (17) Review the functions of each of the GOCC and, upon determination that there is a conflict between the regulatory and commercial functions of a GOCC, recommend to the President and to the government agency to which such GOCC is attached, a plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory functions.

SECTION 8. Remuneration of Members of the GCG. - The members of the GCG shall not receive any compensation or remuneration for their services as such, but may receive reasonable per diems for actual attendance in meetings of the GCG and reimbursement for actual and reasonable expenses in relation to their attendance of GCG meetings, discharge of their functions or in carrying out the objectives of the GCG: Provided, That per diems payable to the members of the GCG shall be approved by the President.

SECTION 9. The GCG Secretariat. - The GCG shall maintain a full-time technical secretariat in the Office of the President. Within ninety days (90) days from the effectivity of this Act, the GCG shall present to the President the staffing requirement, organizational structure and budget requirements of the GCG Secretariat.

SECTION 10. Managing Director. - The management of the GCG Secretariat shall be vested in the Managing Director who shall be a natural born citizen of the Philippines with known integrity, independence and recognized competence in the areas of corporate governance, policy administration, business management, human resources management and/or financial management/business economics and who has not been convicted of any act involving violation of the Corporation Code of the Philippines, Securities Regulation Code, Presidential Decree No. 902, as amended or any other crime or offense involving moral turpitude.

The Managing Director shall be appointed by the President from a short list of at least five (5) nominees, upon the recommendation of the GCG.

The Managing Director shall be a career executive service officer (CESO) with CESO I rank equivalent to a cabinet department undersecretary: Provided, That the Managing Director shall receive a salary of not less than Salary Grade 30 under Republic Act No. 6758, as amended, otherwise known as the Salary Standardization Law and such allowances and bonuses as may be determined by the GCG and approved by the President, giving due consideration to his overall performance and the performance of the GCG.

SECTION 11. Powers and Duties of the Managing Director. - The Managing Director shall have the following powers and duties:

- (1) Direct and manage the day-to-day affairs and business of the GCG Secretariat, subject to the control and supervision of the GCG;
- (2) Attend all meetings of the GCG and participate in its deliberations;

(3) With the approval of the GCG, determine the staffing pattern and number of personnel of the GCG Secretariat, fix their salaries and other emoluments, and define their powers and duties subject to the laws, rules and regulations administered and enforced by the Civil Service Commission and the Career Executive Service Board in accordance with Presidential Decree No. 1;

(4) Recommend the appointment, removal, suspension or other disciplinary action for cause, of any employee of the GCG Secretariat for the approval of the GCG; and

(5) Perform such other duties as may be delegated or assigned to him by the GCG from time to time.

SECTION 12. Compensation and Position Classification System. - The GCG, after conducting a comprehensive compensation study, shall develop a Compensation and Position Classification System which shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President upon the favorable recommendation of the Civil Service Commission, Department of Budget and Management and the Career Executive Service Board in accordance with Presidential Decree No. 1.

The GCG may recommend, upon the favorable endorsement of the Civil Service Commission, Department of Budget and Management and the Career Executive Service Board in accordance with Presidential Decree No. 1 and subject to the approval of the President, additional allowances or bonuses for certain position titles, giving due consideration to the necessity for such allowances and the good performance of the GOCC.

The following principles shall govern the Compensation and Position Classification System subject to the laws, rules and regulations administered and enforced by the Civil Service Commission, Department of Budget and Management and the Career Executive Service Board in accordance with Presidential Decree No. 1:

(1) All GOCC personnel shall be paid just and equitable wages. Pay distinctions shall take into consideration work distinctions provided that the ratio of compensation between those occupying higher ranks and those in lower ranks should be maintained at equitable levels, giving due consideration to higher percentage of increases to lower level positions and lower percentage increases to higher level positions;

(2) Basic compensation for all personnel in the GOCC shall generally be comparable with those in the private sector doing comparable work and must be in accordance with prevailing laws on minimum wages. The total compensation provided for GOCC personnel shall be maintained at a reasonable level with due regard to the national budget; and

(3) A review of the GOCC compensation rates, taking into account the performance of the GOCC, its overall contribution to the national economy and the possible erosion in purchasing power due to inflation and other factors, shall be conducted periodically.

The Compensation and Position Classification System to be developed and recommended by the GCG subject to the laws, rules and regulations administered and enforced by the Civil Service Commission, Department of Budget and Management and the Career Executive Service Board in accordance with Presidential Decree No. 1 and as approved by the President shall apply to all positions, on full or part-time basis, now existing or later created in the GOCC: Provided, That in no case shall there be any diminution in the salaries of incumbent employees of GOCCs who are covered by Republic Act No. 6758, as amended, upon the implementation of the Compensation and Position Classification System for GOCCs.

No GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG under this Act.

CHAPTER III

Reorganization of Government - Owned or Controlled Corporations

SECTION 13. Number of Directors/Trustees/Commissioners. - The present number of Directors/Trustees/Commissioners provided in the charter of the GOCCs shall be maintained, but in no case shall the total number of Directors/Trustees/Commissioners exceed nine (9) members.

SECTION 14. Appointment of the Board of Directors/Trustees/Commissioners. - An Appointive Director/Trustee/Commissioner shall be appointed by the President of the Philippines from a short list prepared by the GCG.

The GCG shall formulate its rules and criteria in the selection and nomination of prospective appointees: Provided, however, That all nominees included in the list submitted by the GCG to the President shall meet the Fit and Proper Rule as defined under this Act and such other qualifications as the GCG may determine taking into consideration the unique requirements of each GOCC. No person who is not included in the short list prepared by the GCG may become an Appointive Director: Provided, That the GCG shall ensure that the short list shall exceed by at least fifty percent (50%) of the number of directors/trustees/commissioners to be appointed: Provided, further, That in the event that the President does not see fit to appoint any of the nominees included in the short list, he shall require the GCG to submit additional nominees.

SECTION 15. Term of Office. - The respective charter of each GOCCs to the contrary notwithstanding, the term of office of each Appointive Director shall be one (1) year. An Appointive Director may be nominated by the GCG for re-appointment by the President only if he or she obtains a performance score of above average or its equivalent or higher in the immediately preceding year of his or her tenure as Appointive Director based on the performance criteria for Appointive Directors for the GOCC. Of the Appointive Directors first appointed under this Act, at least one-third (1/3) shall serve for three (3) years; at least one-third (1/3) for two (2) years and the remaining Appointive Directors shall serve for one (1) year. Thereafter, every Appointive Director so appointed shall serve for one (1) year.

Appointment to any vacancy shall be only for the unexpired term of the predecessor. The appointment of a director to fill such vacancy shall be in accordance with the manner provided in Section 14 of this Act.

Any provision of law to the contrary notwithstanding, all incumbent Chief Executive Officers as defined in this Act and members of the Board of GOCCs shall, upon approval of this Act, have a term of office until July 1, 2011 or until their successors shall have been appointed, or unless sooner replaced by the President.

SECTION 16. The Chief Executive Officer of the GOCC. - The Chief Executive Officer (CEO) or the highest-ranking officer provided in the charters of the GOCCs, shall be elected annually by the members of the Board from among its ranks: Provided, That no CEO shall be elected unless he or she possesses the proper career executive service officer (CESO) rank in accordance with Presidential Decree No. 1 as duly certified by the Career Executive Service Board. The CEO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause.

SECTION 17. Requisites for the Creation of a new GOCC or Related Corporation Under the Corporation Code. - A government agency seeking to establish a GOCC or Related Corporation under the Corporation Code of the Philippines shall, before registering the same with the Securities and Exchange Commission (SEC), first obtained the approval of the President for the creation of such GOCC or Related Corporation. The SEC shall not register the articles of incorporation and by-laws of a proposed GOCC or Related Corporation, unless the application for registration is accompanied by an endorsement from the GCG stating that the President has approved the same.

CHAPTER IV

Board of Directors/Trustees/Commissioners/Officers Of Government-Owned or Controlled Corporations

SECTION 18. Coverage. - The duties, obligations, responsibilities and standards of care provided under this Chapter shall be applicable to all members of the Board of Directors/Trustees/Commissioners and Officers of GOCCs now existing or created after the effectivity of this Act. These duties, obligations and responsibilities shall be in addition to the powers and functions provided in the individual charters or articles of incorporation and by-laws of their respective GOCCs.

SECTION 19. Fiduciary Duties of the Members of the Board and Officers. - As fiduciaries of the State, members of the Board of Directors/Trustees/Commissioners and Officers of GOCCs have the legal obligation and duty to always act in the best interest of the GOCC, with utmost good faith in all its dealings with the properties and monies of the GOCC.

The members of the Board and Officers of GOCCs shall:

- (1) Act with utmost and undivided loyalty to the GOCC;
- (2) Act with due care, extraordinary diligence, skill and good faith in the conduct of the business of the GOCC;
- (3) Avoid conflicts of interest and declare any interest they may have in any particular matter or transaction before the Board;
- (4) Apply sound business principles to ensure the financial soundness of the GOCC; and
- (5) Elect and/or employ only Officers who are fit and proper to hold such office with due regard to their qualifications, competence, experience and integrity.

Where a member of the Board or an Officer, by virtue of his office, acquires or receives for himself a benefit or profit, of whatever kind or nature, including but not limited to, the acquisition of shares in corporations where the GOCC has an interest, using the properties of the GOCC for their own benefit, receiving commission on contracts from the GOCCs assets or taking advantage of corporate opportunities of the GOCC, all such profits or benefits shall be subject to restitution under Section 25 of this Act, without prejudice to any administrative, civil or criminal action against the members of the Board of Directors/Trustees/Commissioners or Officers. This provision shall be applicable notwithstanding the fact that such member of the Board or Officer risked his own funds or money in the venture.

SECTION 20. Trustee Relation to the Properties, Interests and Monies of the GOCC. - Except for the reasonable per diem received for actual attendance in board meetings and the reimbursement for actual and reasonable travelling and transportation expenses and

bonuses within the limits authorized by the GCG and approved by the President, any and all realized profits and/or benefits, including but not limited to, the share in the profits, bonuses of members of the Board or Officers in excess of that authorized by the GCG and approved by the President, stock options, dividends and other similar offers or grants from corporations where the GOCC is a stockholder or investor, and any benefit from the performance of members of the Board or Officers of the Corporation acting for and in behalf of the GOCC in dealing with its properties and investments in other corporations, management of subsidiaries and other interest, are to be held in trust and shall be accounted for and turn over by such member of the Board or Officer to the GOCC they represent.

SECTION 21. Care, Diligence and Skill in the Conduct of the Business of the GOCC. - The members of the Board and the Officers as defined in this Act must exercise extraordinary diligence in the conduct of the business and in dealing with the funds and properties of the GOCC. Such degree of diligence requires the utmost diligence of a very cautious person with due regard for all the circumstances.

SECTION 22. Fit and Proper Rule. - All members of the Board, the Chief Executive Officer and Officer as defined under this Act shall be qualified by the "fit and proper" rule to be determined by the GCG in consultation and coordination with the relevant government agencies to which the GOCC is attached and approved by the President.

To maintain the quality of management of the GOCCs, the GCG, in coordination with the relevant government agencies such as, but not limited to, the Civil Service Commission and Career Service Executive Service Board, shall, subject to the approval of the President, prescribe, pass upon and review the qualifications and disqualifications of individuals appointed as directors/trustees/commissioners or elected as officers of the GOCC and shall disqualify those found unfit.

In determining whether an individual is fit and proper to hold the position of a director/trustee/commissioner or officer of the GOCC, due regard shall be given to his integrity, experience, education, training, qualification and competence.

SECTION 23. Power of the Board of Directors/Trustees/Commissioners to Discipline or Remove Officers of GOCC. - Subject to laws, rules and regulations administered and enforced by the Civil Service Commission and the Office of the Ombudsman, the Board shall have the authority to discipline the Chief Executive Officer, the officers and employees of the GOCC or order their suspension or removal from office, upon a majority vote of the members of the Board who actually took part in the investigation and deliberation thereof.

SECTION 24. Limits to Per Diems, Allowances and Bonuses. - The charters of each of the GOCCs to the contrary notwithstanding, the members of the Board of Directors/Trustees/Commissioners of the GOCCs shall not receive any compensation nor be entitled to retirement benefits as such directors. They shall, however, be entitled to reasonable per diems for actual attendance in Board meetings which shall not be held for more than two (2) times per month: Provided, That the per diem is authorized under the charter of the GOCC: Provided, further, That such Directors/Trustees/Commissioners may be entitled to bonuses subject to the approval of the President equivalent to not more than two (2) months salary of the CEO of the GOCC, based on the individual and the GOCC's performance: Provided, finally, That any bonus in excess of this limit shall be subject to the approval of the President.

In case of GOCCs organized solely for the promotion of social welfare and common good without regard to profit, the total yearly per diems, allowances and bonuses in the aggregate which the members of the Board of such GOCCs may receive shall be determined by the President based on the achievement of such GOCC of its performance targets.

SECTION 25. Restitution. - Upon the determination and report of the Commission on Audit that properties or monies belonging to the GOCC are in the possession of a member of the Board or Officer without authority, or that profits are earned by the member of the Board or Officer in violation of his/her fiduciary duty, or the aggregate per diems, allowances and bonuses received in a particular year are in excess of the limits provided under this Act, the member of the Board or Officer receiving such properties or monies shall return the same to the GOCC without the necessity of demand and without prejudice to the administrative, civil and criminal action that shall be filed against such director/trustee/commissioner or officer of the said GOCC.

CHAPTER V

Miscellaneous Provisions

SECTION 26. Appropriations. - The amount of TEN MILLION PESOS (P10,000,000.00) is initially appropriated for the creation and operations of the GCG, to be sourced from the Contingent Fund of the President. Subsequent appropriations shall be similarly sourced.

SECTION 27. Suppletory Application of the Corporation Code and Charters of the GOCCs. - The provisions of the Corporation Code of the Philippines and the provisions of the charters of the relevant GOCC, insofar as they are not inconsistent with the provisions of this Act, shall apply suppletorily to GOCCs.

SECTION 28. Repealing Clause. - All laws, decrees, executive orders, presidential decrees, rules and regulations or parts thereof contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 29. Separability Clause. - If for any reasons, any part or provision of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected thereby shall remain in full force and effect.

SECTION 30. Effectivity. - This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved,