

First Regular Session
House Bill No. 4479



Introduced by HON. REYNALDO V. UMALI

EXPLANATORY NOTE

On June 8, 2001, Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" or EPIRA was enacted and envisioned to bring down electricity rates and to improve the delivery of power supply to end-users by encouraging greater competition and efficiency in the electricity industry.

The law's declared and policies and objectives were clearly spelled out, to wit:

- a) To ensure and accelerate the total electrification of the country;
- b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability;
- d) To enhance the inflow of private capital and broaden ownership base of the power generation, transmission and distribution sectors;
- e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- f) To protect the public interest as it is affected by providers of electric power.

Almost thirteen years from its enactment the objectives of the law have not yet been fully realized, especially if measured against the stated policies. Certain ERC rulings may even be called to question as measured against the mandate to promote consumer interest. Even the institutional and structural reforms have not yet resulted in the envisioned changes on the energy sector.

Thus, our country remains to have the highest electricity rates in the region and the 9th highest in the world.

We still have power shortages and power rates hike which resulted in the horrendous 8-10 hour blackouts and power outages in the Mindanao that has negatively impacted on business and economy in the region and compounded the suffering of the people of Mindanao.

We recently experienced shocking power rates hikes in Metro Manila last November and December of 2013, which shook the confidence of the people in the wisdom and promises of energy deregulation and privatization.

In addition, our country remains to have one of the lowest per capita consumption of energy in the world because of our lack of energy infrastructures.

Sadly, EPIRA appears to have fallen short of its promise of reliable and affordable supply of electric power when it was passed by the 11th Congress, as the solution to the chronic shortages in power supply and the answer to the unstable and high power rates.

Indeed, even the objectives of privatization of NAPOCOR power generation plants and other assets were never attained as can be seen for the last thirteen years since the EPIRA took effect. Such privatization resulted to constant increase of electricity rate brought about by the spike in the WESM and the government hands are tied to mitigate the situation because it is left with no authority to contract out capacity to stabilize the market price.

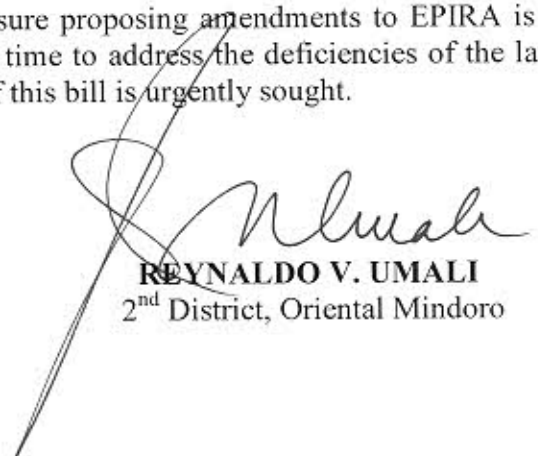
The healthy market competition envisioned by EPIRA thru asset privatization did not happen because only a limited number of private investors had the financial capability to acquire NAPOCOR assets.

As to the intent of mitigating the huge financial obligation of the government due to its subsidizing the financial losses of NAPOCOR by privatizing the NAPOCOR assets, the objective failed. This is because the proceeds of privatization were partly used in the operation of PSALM aside from the fact that the purchase price of disposed assets were paid on the basis of a long term contract where the buyer can even use its income while operating the power plants during the payment period.

Clearly, we must take a closer look at the need for government to retain ownership and control of the remaining assets of NAPOCOR and the call for it to re-assume its fundamental responsibility to provide for its people by engaging in power generation to produce only ancillary supply and to stabilize market price.

Today, the situation necessitates a diligent and thorough review and scrutiny of EPIRA, with all stakeholders engaged and with all its aspects, including the grant and situs of regulatory powers, revisited, especially amid growing calls for government to get into power generation once again and to re-evaluate its power assets privatization plan. This review must be made with concrete proposals in mind to plug loopholes and other oversights in the law. It must address important issues involving cross ownership, the need to require competitive bidding of bilateral contracts, and the grounds for suspending market operation and imposing mitigating measures, the future role of government in power generation, together with an in-depth study and reassessment of the present rules and regulations of WESM and ERC, as well as, the Implementing Rules and Regulations of EPIRA itself.

It is for this reason that this measure proposing amendments to EPIRA is being earnestly put forward. Today is the right time to address the deficiencies of the law and thus, the early deliberation and passage of this bill is urgently sought.



REYNALDO V. UMALI
2nd District, Oriental Mindoro

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. _____

Introduced by **HON. REYNALDO V. UMALI**

AN ACT
AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 9136,
OTHERWISE KNOWN AS AN ACT ORDAINING REFORMS IN THE
ELECTRIC POWER INDUSTRY OR EPIRA AND FOR OTHER PURPOSES

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

SECTION 1. Section 2 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” is hereby amended by adding a new paragraph (e) to read as follows:

“ Sec. 2. Declaration of Policy. – It is hereby declared the policy of the State:

X X X.

(e) TO ENSURE TIMELY COMPLETION OF POWER PROJECTS FOR ENERGY SECURITY AND MINIMIZE COSTS BY CONSIDERING POWER PROJECTS AS PROJECTS OF NATIONAL SIGNIFICANCE AND/OR ARE IMBUED WITH PUBLIC INTEREST;”

Subsequent paragraphs are hereby re-lettered accordingly.

SECTION 2. Section 6, paragraph 5 is hereby reinstated and modified to read:

“SEC. 6. *Generation Sector.* - X X X.

PURSUANT TO THE OBJECTIVE OF LOWERING ELECTRICITY RATES TO END-USERS, SALES OF GENERATED POWER BY GENERATION COMPANIES SHALL BE EXEMPT FROM VALUE-ADDED TAX (VAT).”

SECTION 3. Section 22 is amended to read:

“SEC. 22. *Distribution Sector.* – X X X.

SALES OF ELECTRICITY BY DISTRIBUTION UTILITIES TO THE END-USERS SHALL BE EXEMPT FROM VALUE ADDED TAX (VAT).

SECTION 4. Section 23 is amended to read:

“SEC. 23. Functions of Distribution Utilities. – X X X.

A distribution utility shall have the obligation to supply electricity in the least cost manner to its captive market THROUGH A PUBLIC AND COMPETITIVE SELECTION PROCESS OR SWISS CHALLENGE PROCEDURE, AS THE CASE MAY BE, subject to the collection of retail rate AT SUCH AMOUNTS AND IN SUCH MANNER AS PROVIDED HEREIN, duly [approved] AUTHORIZED by the ERC[.]; PROVIDED, THAT THE ERC, WITHIN THREE (3) MONTHS FROM THE EFFECTIVITY OF THIS ACT, SHALL PROVIDE THE PARAMETERS FOR THE CONDUCT OF A PUBLIC AND COMPETITIVE SELECTION PROCESS OR SWISS CHALLENGE PROCEDURE AS THE CASE MAY BE; PROVIDED, FURTHER THAT, ALL DISTRIBUTION UTILITIES SHALL BE REQUIRED TO FULLY OR ADEQUATELY CONTRACT THEIR CURRENT AND FUTURE ENERGY AND DEMAND REQUIREMENTS FROM BILATERAL POWER SUPPLY CONTRACTS AS DETERMINED BY ERC BASED ON MARKET CONDITIONS AND IN ACCORDANCE WITH SUCH RULES AND REGULATIONS TO BE PROMULGATED BY THE COMMISSION. FOR THE PURPOSE OF THIS SECTION, “ENERGY AND DEMAND REQUIREMENT” SHALL MEAN THE AMOUNT OF ELECTRICITY THAT IS REQUIRED FOR THE DISTRIBUTION UTILITY TO SUPPLY THE ELECTRICITY REQUIREMENTS OF ITS ELECTRICITY END-USERS AT ANY GIVEN TIME.

TO ENSURE LEAST COST SERVICE TO ITS CUSTOMERS, ALL DISTRIBUTION UTILITIES, IN ITS POWER SUPPLY CONTRACTING, SHALL ENSURE THAT THE BASE LOAD, MID-MERIT AND PEAK LOAD REQUIREMENTS IN ACCORDANCE WITH CONTRACTS BASED ON THE LOAD PROFILE, SHALL BE FULLY OR ADEQUATELY COVERED BY BILATERAL CONTRACTS.”

SECTION 5. Section 30, last paragraph is amended to read:

“SEC. 30. Wholesale Electricity Spot Market. – X X X.

In cases of national and international security emergencies or natural calamities, OR SUCH OTHER CASES OR REASONS WHICH MAY AFFECT THE DELIVERY OF ADEQUATE SUPPLY OF ELECTRICITY IN ANY PARTICULAR GRID, the ERC is hereby empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity market failure.”

SECTION 6. Section 31 is hereby amended to read:

“SEC. 31. Retail Competition and Open Access. – X X X.

Upon the initial implementation of open access, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1MW) for the preceding twelve (12) months to be the contestable market. Two (2) years thereafter, the threshold level for the contestable market shall be reduced to seven hundred fifty kilowatts (750kW). At this level, aggregators shall be allowed to supply electricity

to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750kW). TWO (2) YEARS THEREAFTER, THE THRESHOLD LEVEL SHALL BE FURTHER REDUCED TO FIVE HUNDRED KILOWATTS (500 KW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level. In the case of electric cooperatives, retail competition and open access shall be implemented no earlier than five (5) years upon the effectivity of this Act."

SECTION 7. Section 37 is hereby amended by adding a new paragraph (p) to read:

"SEC. 37. Powers and Functions of the DOE. – X X X.

(p) SUPPORT THE MODERNIZATION OF THE ELECTRIC GRID INFRASTRUCTURE BY FORMULATING POLICIES AND PROVIDING INCENTIVES TO PROMOTE ADOPTION OF SMART GRID TECHNOLOGIES, PRACTICES AND SERVICES TO IMPROVE RELIABILITY, EFFICIENCY, DEMAND RESPONSE SUPPORT, INTEROPERABILITY AND INTEGRATED AUTOMATION OF GENERATION, TRANSMISSION AND DISTRIBUTION LINES, ELECTRICITY TRADING AND CUSTOMER LOAD MANAGEMENT."

Subsequent paragraphs are hereby re-lettered accordingly.

SECTION 8. Section 38 is hereby amended to read:

"SEC. 38. *Creation of the Energy Regulatory Commission.* –

X X X.

The Commission shall be composed of a Chairman and [four (4)] EIGHT (8) members, DIVIDED INTO THREE (3) DIVISIONS, DESIGNATED FOR LUZON, VISAYAS AND MINDANAO, CONSISTING OF THREE (3) COMMISSIONERS EACH, WITH THE CHAIRMAN SITTING IN THE FIRST DIVISION, to be appointed by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least [three (3)] FIVE (5) years actual and distinguished experience in their respective fields of expertise: Provided, That out of the [four (4)] EIGHT (8) members of the Commission at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, [and] one (1) shall be a certified public accountant with at least ten (10) years experience in active practice, AND THREE (3) SHALL BE ENGINEERS WITH AT LEAST TEN (10) YEARS EXPERIENCE IN ACTIVE PRACTICE, WHO WILL SIT IN EACH DIVISION."

X X X.

The presence of at least [three (3)] FIVE (5) members of the Commission, sitting *en banc*, shall constitute a quorum and the majority

vote of [two (2)] THREE (3) members in a meeting where a quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision, or other act of the Commission *en banc* in the exercise of its quasi-judicial functions; Provided, That in fixing rates and tariffs, an affirmative vote of [three (3)] FIVE (5) members shall be required.

CASES OR MATTERS HEARD BY A DIVISION SHALL BE RESOLVED WITH THE CONCURRENCE OF AT LEAST TWO (2) MEMBERS. WHEN THE REQUIRED NUMBER IS NOT OBTAINED, THE CASE SHALL BE DECIDED EN BANC; PROVIDED THAT NO DECISION RENDERED EN BANC OR IN DIVISION MAY BE MODIFIED OR REVERSED EXCEPT BY THE COMMISSION SITTING EN BANC.

FOR THIS PURPOSE THE COMMISSION SHALL DEFINE THROUGH ITS INTERNAL RULES CASES OR MATTERS THAT SHALL BE RESOLVED BY A DIVISION AND THOSE THAT SHALL BE RESOLVED SITTING EN BANC.

THE ERC SHALL ADOPT AN EXPANDED ORGANIZATIONAL STRUCTURE AND PLANTILLA POSITIONS NECESSARY TO CARRY OUT AND SUPPORT THE POWERS AND FUNCTIONS UNDER THIS ACT."

SECTION 9. Section 41 is amended to read:

SEC. 41. *Promotion of Consumer Interests.* – "The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

FOR THIS PURPOSE THE ERC SHALL CREATE A CONSUMER ADVOCACY OFFICE, WHICH SHALL ACT AS REPRESENTATIVE FOR AND IN BEHALF OF THE CONSUMERS, FOR PURPOSES OF EITHER PROSECUTION OR DEFENSE, IN ANY PROCEEDING, CASE OR MATTER BEFORE THE ERC. THE CONSUMER ADVOCACY OFFICE SHALL BE UNDER THE ORGANIZATIONAL STRUCTURE OF THE ERC ONLY FOR PLANTILLA AND COMPENSATION PURPOSES. THE SAID OFFICE SHALL ACT INDEPENDENTLY OF THE COMMISSION AND SHALL BE HEADED BY A CHIEF ADVOCACY OFFICER WHO SHALL BE A MEMBER OF THE PHILIPPINE BAR WITH AT LEAST TEN (10) YEARS EXPERIENCE IN THE ACTIVE PRACTICE OF LAW.

THE CHIEF ADVOCACY OFFICER SHALL BE ENTITLED TO THE SAME SALARY, ALLOWANCE AND BENEFIT AS THAT OF A REGIONAL TRIAL COURT JUDGE. THE REST OF THE OFFICERS UNDER THE CONSUMER ADVOCACY OFFICE SHOULD LIKEWISE BE MEMBERS OF THE PHILIPPINE BAR WITH AT LEAST (5) YEARS EXPERIENCE IN THE ACTIVE PRACTICE OF LAW WHO SHALL BE ENTITLED TO THE SAME SALARIES, ALLOWANCES AND BENEFITS AS THOSE OF THE METROPOLITAN TRIAL COURT JUDGES.

THE ERC SHALL, IN ITS RULES OF PRACTICE AND PROCEDURE, DEFINE THE PROCEEDINGS, CASES OR MATTERS

UNDER WHICH THE CONSUMER ADVOCACY OFFICE IS ALLOWED TO PARTICIPATE.”

SECTION 10. Section 43, paragraph (t) is amended to read:

SEC. 43. *Functions of the ERC.* – X X X.

“(t) Perform such other regulatory functions as are appropriate in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, EXCLUDING RENEWABLE ENERGY AND OTHER GENERATION FACILITIES GENERATING SMALL CAPACITIES OF NOT MORE THAN TWENTY (20) MEGAWATTS OF INSTALLED CAPACITY, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares stocks: Provided, however, That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance; and”

SECTION 11. Section 45 is hereby amended to read:

“SEC. 45. *Cross Ownership, Market Power Abuse and Anti-Competitive Behavior.* – No participant in the electricity industry or any other person may engage in any anti-competitive behavior including but not limited to, cross subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of [contestable markets] ELECTRICITY END-USERS[.]; PROVIDED THAT, TRANSMISSION AND DISTRIBUTION SECTORS SHALL REMAIN THEIR NATURAL MONOPOLY BUSINESSES AND, THEREFORE, CROSS-OWNERSHIP SHALL NOT BE ALLOWED; PROVIDED HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE HELD TO AFFECT OR IMPAIR ANY RIGHT, PRIVILEGE OR INTEREST HERETOFORE LEGALLY ACQUIRED.

AS USED IN THIS ACT, CROSS OWNERSHIP SHALL REFER TO THE HOLDING OF ANY INTEREST, IN WHATEVER FORM, DIRECTLY AND INDIRECTLY, BY ANY ENTITY ENGAGED IN THE GENERATION, SUPPLY, DISTRIBUTION OR TRANSMISSION OF ELECTRICITY, IN OR WITH ANOTHER ENTITY SIMILARLY ENGAGED IN THE GENERATION, SUPPLY, DISTRIBUTION OR TRANSMISSION OF ELECTRICITY. ACCORDINGLY, NO ELECTRIC INDUSTRY PARTICIPANT, SUCH AS A GENERATION COMPANY, SUPPLIER OF ELECTRICITY, DISTRIBUTION UTILITY OR TRANSMISSION COMPANY OR ITS CONCESSIONAIRE, AND THEIR RESPECTIVE AFFILIATES, SUBSIDIARIES, INCLUDING ANY OF ITS STOCKHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR RELATIVES WITHIN THE FOURTH CIVIL DEGREE OF CONSAGUINITY OR AFFINITY SHALL BE ALLOWED TO HOLD ANY INTEREST, IN WHATEVER FORM, DIRECTLY OR INDIRECTLY, IN OR WITH ANY OTHER ENTITY SIMILARLY ENGAGED IN THE GENERATION, SUPPLY, DISTRIBUTION OR TRANSMISSION OR ITS CONCESSIONAIRE, AS PROVIDED IN THIS ACT.

No generation company, distribution utility, or its respective subsidiary or affiliate or stockholder or official or a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by the ERC within the fourth civil degree of consanguinity or affinity, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its concessionaire. Likewise, the TRANSCO or its concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity, shall not hold any interest, whether directly or indirectly, in any generation company or distribution utility. Except for *ex-officio* government-appointed representatives, no person who is an officer or director of the TRANSCO or its concessionaire shall be an officer or director of any generation company, distribution utility or supplier.

X X X.

To promote true market competition and prevent harmful monopoly and market power abuse, the ERC shall enforce the following safeguards:

(a) No company or related groups can own, operate or control more than [thirty] TWENTY-FIVE percent [(30%)] (25%) of the installed generating capacity of a grid and/or [twenty-five] TWENTY percent [(25%)] (20%) of the nationally installed generating capacity[.], REGARDLESS OF THE ENTITY OR ENTITIES CONTROLLING THE TERMS AND CONDITIONS OF THE PRICES OR QUANTITIES OF THE OUTPUT SOLD; OR THE ENTITY OR ENTITIES CONTROLLING SUCH CAPACITY; OR IN THE CASE OF NPC AND ITS INDEPENDENT POWER PRODUCERS, THE ENTITY WHICH ACTUALLY CONTROLS THE QUANTITY OR DISPATCH LEVEL GENERATED FROM THE SUBJECT POWER PLANTS AND THE PRICE OF ELECTRICITY OFFERED TO THE MARKET; PROVIDED THAT "INSTALLED GENERATING CAPACITY" SHALL REFER TO THE MAXIMUM OUTPUT OR NAMEPLATE RATING LESS PERMANENT REDUCTIONS, BUT EXCLUDING TEMPORARY REDUCTIONS DUE TO PLANT SHUTDOWN OR TRANSMISSION CONSTRAINTS, OR SUCH OTHER TEMPORARY REDUCTIONS OF A PLANT'S GENERATING CAPACITY. "Related groups" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their respective relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;

"(b) Distribution utilities may enter into bilateral power supply contracts subject to review by ERC; Provided That such review shall only be required for distribution utilities whose markets have not reached household demand level; PROVIDED FURTHER, THAT SUCH BILATERAL CONTRACTS SHALL BE SUBJECT TO PUBLIC AND COMPETITIVE BIDDING OR SWISS CHALLENGE PROCEDURE AS THE CASE MAY BE, UNDER SUCH RULES AND REGULATIONS AS THE ERC MAY PROMULGATE. For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, no distribution utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an associated firm engaged in generation but such limitation, however, shall not prejudice contracts entered into prior to the effectivity of this Act. An associated firm with respect to another entity refers to any

person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity; and

X X X.”

SECTION 12. Section 47 is hereby amended to read:

“SEC. 47. *NPC Privatization.* - Except for the assets of SPUG, AGUS AND PULANGUI HYDRO POWER COMPLEXES AND OTHER NPC ASSETS IN MINDANAO, the generating assets, real estate, and other disposable assets as well as generation contracts of NPC shall be privatized in accordance with this Act. X X X.

(f) The Agus and the Pulangui complexes in Mindanao shall be RETAINED AND MANAGED BY THE STATE AND excluded from among the generation companies that will be [initially] privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC; [Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T). Build-Rehabilitate-Operate-Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;]

SECTION 13. Section 71 is hereby amended to read:

“SEC. 71. *Electric Power Crisis Provision.* - Upon the determination by the President of the Philippines AND RECOMMENDATION OF THE DOE SECRETARY BASED ON INDICES AND BENCHMARKS AS DETERMINED BY DOE, of an imminent shortage of the supply of electricity, Congress, THROUGH THE JOINT CONGRESSIONAL POWER COMMISSION OR “POWER COMMISSION”, may authorize, through a [joint] resolution, the establishment BY THE PRESIDENT of additional generating capacity under such terms and conditions as it may approve.”

SECTION 14. Section 80 is hereby amended to read:

“SEC. 80. *Applicability and Repealing Clause.* - X X X. The provision with respect to electric power of Section 1[1]2(c) of Republic Act 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or modified accordingly. X X X.”

SECTION 15. Repealing Clause. - Sections 108 (A)(ii) and 109 (1) of the National Internal Revenue Code, as amended by Republic Act No. 9337, and Sections 24 (A) and (B) of Republic Act No. 9337 are hereby repealed. All other previous or existing laws, decrees, executive orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed, amended or modified accordingly.

SECTION 16. Effectivity Clause. - This Act shall take effect within fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation, whichever comes earlier.

Approved,