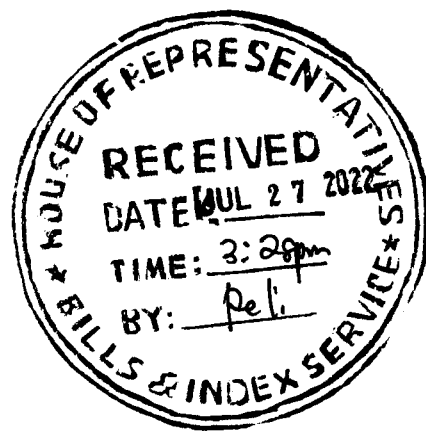


NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

HOUSE OF REPRESENTATIVES

House Bill No. 2557



Introduced by Representative Ralph G. Recto

AN ACT
INSTITUTIONALIZING PUBLIC-PRIVATE PARTNERSHIPS (PPP), CREATING
THE PPP CENTER, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER
PURPOSES

EXPLANATORY NOTE

The Philippines is envisioned as a country that has high sustainable growth, generates mass employment and enjoys reduced poverty. Towards this end, encouraging public-private partnerships (PPPs) should be a means to develop the country's infrastructure in all sectors and secure our economic global ranking. It is therefore of utmost importance to revisit Republic Act No. 6957, as amended by Republic Act No. 7718, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes" or what is otherwise called the "Build-Operate-Transfer" (BOT) law.

This bill is aimed at further improving the "Build-Operate-Transfer" (BOT) law by expanding its coverage and providing more incentives to the private sector who become partners of the government in implementing infrastructure projects.

This bill limits the projects to be implemented as PPP projects to hard infrastructure charging user fee or tariff and excludes social infrastructure projects such as prisons, education and health facilities, and other infrastructure projects like government buildings, tourism projects, power projects, climate change mitigation and adaptation measures.

One salient feature of this bill is the automatic endorsement by the Regional Development Council of PPP projects which have satisfactorily complied with the requirements to avoid arbitrary and unreasonable withholding of endorsement of projects.

Another salient feature of this bill is the provision of criteria for classification of infrastructure projects as "Projects of National Significance". These projects should have a direct economic impact which should not be less than the threshold set by the Investment Coordination Committee (ICC); with a direct positive impact on at least two cities or municipalities; and can create new jobs. When classified as such, these projects will be exempted from real property tax.

This bill also protects these projects from being the subject of judicial reliefs such as temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions issued by any court, except the Supreme Court.

To ensure consumer protection, the bill gives paramount consideration to the affordability of user fees and efficiency of public services when awarding PPP projects.

In the interest of transparency and good governance, four (4) private sector representatives shall be elected by the private sector associations concerned in the PPP Governing Board, which shall be the overall policy-making body for all PPP-related matters.

All of these features work to strengthen the BOT law and encourage more PPPs in national and local infrastructure projects.

With these in mind, the passage of this bill is earnestly sought.



RALPH G. RECTO

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AN ACT

**INSTITUTIONALIZING PUBLIC-PRIVATE PARTNERSHIPS (PPP), CREATING
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PURPOSES**

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

1 Section 1. This Act shall be known as the "Public-Private Partnership (PPP) Act" of
2 the Philippines.

3 Sec. 2. *Declaration of Policy.* – It is the declared policy of the State to recognize
4 the indispensable role of the private sector as the main engine for national growth and
5 development, create an enabling environment for PPP, and provide the most
6 appropriate incentives to mobilize private resources for the purpose of financing,
7 designing, constructing, operating and maintaining infrastructure projects and services
8 normally financed and undertaken by the government.

9 The State recognizes the long-term nature of private investment in infrastructure
10 projects.

11 The State shall protect the public interest by providing affordable, accessible, and
12 efficient public infrastructure facilities. Subject to reasonable rules and under the
13 guiding principle of full public disclosure of all transactions, the State shall ensure fair
14 and reasonable pricing and timely delivery of quality infrastructure through equitable
15 risk allocation inherent in projects implemented under this Act and its implementing
16 rules and regulations (IRR).

1 The State affirms open, transparent and competitive selection as the central tenet
2 of government procurement in securing private investment in public infrastructure
3 projects.

4 Sec. 3. *Definition of Terms.* – The following terms used in this Act shall have the
5 meanings stated below:

6 a) *Approving Body* – refers to an entity authorized to approve PPP projects
7 proposed under this Act and its IRR, in accordance with Section 7 of this Act.

8 b) *Availability-based PPP* – refers to a PPP where the implementing agency
9 commits to make predetermined payments for contractually-defined performance
10 delivery.

11 c) *Concession-based PPP* – refers to a PPP where the implementing agency
12 grants the project proponent the right to recover its investment, operating and
13 financing costs by charging the public a user fee or tariff.

14 d) *Construction* – refers to new construction, rehabilitation, improvement,
15 expansion, alteration, installation, and related works and activities in connection
16 with an infrastructure facility, including the necessary supply of equipment,
17 materials, labor and services and related items.

18 e) *Contractor* – refers to any person, who may or may not be the project
19 proponent, and who shall undertake the actual construction of an infrastructure
20 facility.

21 f) *Cooperation Period* – refers to the period of operation of an infrastructure
22 facility, which period, in the case of public utilities requiring a franchise, shall be
23 in accordance with law.

24 g) *Facility Operator* – refers to a person registered with the Securities and
25 Exchange Commission, who may or may not be the project proponent, and who
26 is responsible for all aspects of operation and maintenance of an infrastructure
27 facility, including but not limited to the collection of tolls, fees, rentals or charges
28 from facility users.

29 h) *Grantor* – refers to an implementing agency and other government
30 agencies that own the project assets or franchise.

31 i) *GOCC* – refers to a government-owned or -controlled corporation as
32 defined in Republic Act No. 10149.

1 j) *ICC* – refers to the Investment Coordination Committee of the National
2 Economic and Development Authority (NEDA) Board.

3 k) *Implementing Agency* – refers to the Department of Public Works and
4 Highways (DPWH), Department of Transportation (DOTr), Department of
5 Information and Communications Technology (DICT), National Irrigation
6 Administration (NIA), National Housing Authority (NHA), Philippine Reclamation
7 Authority (PRA), local government units (LGUs), and government-owned and
8 controlled corporations (GOCCs) attached to these respective departments and
9 agencies such as: Light Rail Transit Authority (LRTA), North Luzon Railways
10 Corporation (NLRC), Philippine Ports Authority (PPA), Manila International Airport
11 Authority (MIAA), and Mactan Cebu International Airport Authority (MCIAA).

12 l) *Infrastructure Facility* – refers to such facility as are established by the
13 government in relation to or as may be necessary for the discharge of its functions,
14 whether governmental or proprietary, including highways, railroads and railways,
15 transport systems, ports, airports, telecommunications, information technology
16 systems and infrastructure, dams, water supply, irrigation, sewerage, drainage,
17 dredging, land reclamation projects, housing, markets, slaughterhouses,
18 warehouses and solid waste management facilities.

19 For the construction stage of these infrastructure facilities where the contractor is
20 a foreigner, Filipino labor shall be employed or hired in the different phases of
21 construction.

22 m) *IRR* – refers to the implementing rules and regulations of this Act.

23 n) *LGU* – refers to a local government unit.

24 o) *Local PPP Project* – refers to a PPP Project that will be undertaken by an
25 LGU.

26 p) *National PPP Project* – refers to a PPP Project that will be undertaken by
27 the national government and shall be approved by the NEDA Board upon
28 recommendation by the ICC and endorsement by the PPP Governing Board. Such
29 approval shall be carried by the implementing agency or grantor concerned.

30 q) *PDMF* – refers to the Project Development and Monitoring Facility created
31 under Section 8 of this Act.

32 r) *PPP BAC* – refers to the PPP Bids and Awards Committee.

1 s) *PPP or Public-Private Partnership* – refers to a contractual arrangement
2 between the implementing agency and the project proponent for the financing,
3 design, construction, operation, and maintenance, or any combination thereof, of
4 an infrastructure facility under this Act.

5 t) *PPP Center* – refers to the Public-Private Partnership Center of the
6 Philippines created under Executive Order No. 8, series of 2010, as amended.

7 u) *PPP Contract* – refers to the contract between the implementing agency
8 and the project proponent for the design, financing, construction, operation, or
9 maintenance of an infrastructure facility under a PPP Project.

10 v) *PPP Project* – refers to a project undertaken under this Act.

11 w) *Person* – refers to an individual, sole proprietorship, partnership,
12 corporation or any other form of organization, whether domestic or foreign.

13 x) *Priority project* – refers to a project identified by an implementing agency
14 that may be undertaken under this Act as a PPP project and is consistent with the
15 Philippine Development Plan (PDP) or its equivalent at the local level.

16 y) *Project Cost* – refers to total capital cost, financing and other expenses
17 for the design, construction, operation, and maintenance of an infrastructure
18 facility, depending on the PPP contractual arrangement as provided for in Section
19 4 of this Act.

20 z) *Project Proponent* – refers to any private person, as defined in item *w* of
21 this section, who proposes to undertake a PPP project.

22 aa) *Rate of Return* – refers to the maximum rate of return that a project
23 proponent shall be entitled to, as determined by the Approving Body, taking into
24 account, among others, the prevailing cost of capital in the domestic and
25 international markets, the risks being assumed by the project proponent, and
26 prevailing tariff on similar projects: *Provided*, That in case of an unsolicited or
27 solicited proposal, such rate of return shall be determined by the appropriate
28 Approving Body prior to the call for proposals.

29 bb) *Services* – refers to technical services and other services related to
30 infrastructure facilities such as, but not limited to, construction supervision,
31 management, operation and maintenance and related services, which may be
32 included as part of a PPP project.

1 cc) *Solicited PPP Project* – refers to priority projects identified by the
2 implementing agency.

3 dd) *Unsolicited PPP Project* – refers to project proposals submitted by a
4 private person which are not in response to a formal solicitation or request issued
5 by the implementing agency.

6 ee) *Viability Gap Funding (VGF)* – refers to such financial support the
7 government may provide to a concession-based PPP project with the objective of
8 making user fees affordable while improving the commercial attractiveness of the
9 project.

10 Sec. 4. *Variations of Contractual Arrangements.* – PPP Projects may be undertaken
11 through any of the following contractual arrangements and such other variations as
12 may be approved by the ICC:

13 a) *Build-and-Transfer* – refers to a contractual arrangement whereby the
14 project proponent undertakes the financing and construction of a given
15 infrastructure facility and after the completion thereof, turns it over to the
16 implementing agency concerned, which shall pay the project proponent on an
17 agreed schedule its total investments expended on the project, plus a rate of
18 return thereon. This arrangement may be employed in the construction of any
19 infrastructure facility, including critical facilities which, for security or strategic
20 reasons, must be operated directly by the government.

21 b) *Build-Lease-and-Transfer* – refers to a contractual arrangement whereby
22 a project proponent undertakes to finance and construct an infrastructure facility
23 and upon its completion turns it over to the implementing agency concerned on a
24 lease arrangement for a cooperation period, after which ownership thereof is
25 automatically transferred to the implementing agency concerned.

26 c) *Build-Own-and-Operate* – refers to a contractual arrangement whereby a
27 project proponent is authorized to undertake a PPP project, specifically to finance,
28 construct, own, operate and maintain an infrastructure facility from which the
29 project proponent is allowed to recover its total investment, operating and
30 maintenance costs plus a return thereon by collecting tolls, fees, rentals or other
31 charges from facility users.

1 d) *Build-Operate-and-Transfer* – refers to a contractual arrangement
2 whereby the project proponent undertakes a PPP project and transfers ownership
3 of the infrastructure facility to the implementing agency at the end of the
4 cooperation period.

5 e) *Build-Transfer-and-Operate* – refers to a contractual arrangement
6 whereby the implementing agency contracts out the construction of an
7 infrastructure facility to the project proponent. Once the facility is commissioned
8 satisfactorily, ownership is transferred to the implementing agency. The project
9 proponent, however, operates the infrastructure facility on behalf of the
10 implementing agency.

11 f) *Contract-Add-and-Operate* – refers to a contractual arrangement
12 whereby, the project proponent adds to an existing infrastructure facility which it
13 is renting from the government. It operates the expanded infrastructure facility
14 over an agreed cooperation period. There may, or may not be, a transfer
15 arrangement in regard to said facility.

16 g) *Develop-Operate-and-Transfer* – refers to a contractual arrangement
17 whereby favorable conditions external to a new PPP project which is to be built by
18 a project proponent are integrated into the arrangement by giving that entity the
19 right to develop adjoining property, and thus, enjoy some of the benefits the
20 investment creates such as higher property or rent values.

21 h) *Joint Venture* – refers to a contractual arrangement whereby a private
22 person or a group of private persons, and an implementing agency, contribute
23 money, services, assets, or a combination of any or all of the foregoing, to
24 undertake a PPP project, with the intention to share profits, risks and losses.
25 Assets may include equipment, land, intellectual property or anything of value.

26 For joint venture arrangements, the ownership of the infrastructure facility
27 may be transferred to either the implementing agency or to the project proponent:
28 *Provided*, That in the latter case, the transfer shall be made under competitive
29 market conditions: *Provided, further*, That the equity contribution of the
30 implementing agency in a joint venture corporation shall in no case exceed fifty
31 percent (50%) of the outstanding capital stock of the said corporation: *Provided*,

1 *finally*, That the return on investment of either party shall be in proportion to their
2 respective contribution.

3 i) *Operations and Maintenance Contract* – refers to a contractual
4 arrangement whereby the project proponent undertakes the day-to-day operation
5 and maintenance of an infrastructure facility owned by the implementing agency.
6 The project proponent shall undertake the acquisition or provision and upgrading
7 of equipment, systems and other items related to operation and maintenance. The
8 project proponent shall be compensated in the form of a performance-based
9 management or service fee during the cooperation period.

10 j) *Rehabilitate-Operate-and-Transfer* – refers to a contractual arrangement
11 whereby an existing infrastructure facility is turned over to the project proponent
12 to refurbish, improve, operate and maintain for a cooperation period, at the expiry
13 of which the ownership of the facility is transferred to the implementing agency.

14 k) *Supply-and-Operate* – refers to a contractual arrangement whereby the
15 supplier of equipment and machinery for a given infrastructure facility, if the
16 interest of the government so requires, operates such facility. Foreign firms who
17 are allowed to operate the facility shall provide technology transfer and training
18 to Filipino nationals.

19 *Sec. 5. Authority of Implementing Agencies.* – Implementing agencies, in
20 accordance with their respective charters, are hereby authorized to undertake PPP
21 projects with any project proponent in accordance with the provisions of this Act.

22 In undertaking a PPP project under this Act, every GOCC and its subsidiaries shall
23 secure the approval of the head of the implementing agency to which the GOCC is
24 attached.

25 *Sec. 6. Identification of Priority Projects.* – Implementing agencies shall include
26 in their development plans, strategies and investment programs those priority projects
27 that may be undertaken as PPP Projects under this Act. In identifying those projects,
28 the implementing agencies shall be guided by the following principles: effectiveness in
29 meeting government objectives, accountability and transparency, consumer rights,
30 affordability, public access, safety, and security. Priority projects shall be consistent with
31 the Philippine Development Plan or its equivalent at the local level.

1 The implementing agencies shall submit their list of PPP projects or any update
2 thereto to the PPP Center for information. Each proposed PPP project to be implemented
3 under this Act shall be subject to the approval of the appropriate Approving Body.

4 The PPP Center must ensure that the Congress and the public shall be provided
5 with adequate and timely information on PPP projects.

6 *Sec 7. Unsolicited Proposals.* – Projects that are not in the list of priority projects
7 may be considered for unsolicited proposals. Priority projects shall not be considered
8 for unsolicited proposals, except when they involve a new concept or technology or do
9 not have feasibility studies.

10 When a project proponent submits an unsolicited proposal, the implementing
11 agency may either:

12 a) Accept the unsolicited proposal on a negotiated basis: *Provided,* That the
13 following conditions are met:

14 i) The project does not receive VGF or direct payments from any
15 government agency; and

16 ii) Guided by the principles of transparency and competitiveness, the
17 implementing agency has invited by publication for three (3) consecutive
18 weeks in a newspaper of general circulation, as well as websites of the PPP
19 Center and of the implementing agency, the submission of comparative
20 proposals and no other proposal is received for a period stated in the IRR of
21 this Act, which period should not be less than three (3) months nor more
22 than six (6) months from the date of last publication in a newspaper of
23 general circulation. In the event another proponent submits a superior
24 counter-proposal within the period referred to above and it is accepted by
25 the appropriate Approving Body, the original proponent shall have the right
26 to outbid.

27 b) Use the unsolicited proposal as the basis for public bidding as provided in
28 Section 10 of this Act. Upon approval by the appropriate Approving Body, the
29 original proponent thereof shall be reimbursed of the cost incurred in the
30 preparation of the proposal, such as the cost of any feasibility study undertaken:
31 *Provided,* That such reimbursement:

i) shall be in an amount specified in the IRR of this Act, but not exceeding three percent (3%) of the project cost excluding those which will be borne by the implementing agency; and

ii) shall be paid in full by the winning project proponent as a requirement for the award of the contract.

c) Reject the proposal;

If the implementing agency fails to act on the proposal within the period stated in the IRR of this Act, the project proposal shall be deemed rejected, without prejudice to any liability that the erring or negligent officials or employees may incur under existing laws.

Within ten (10) working days from receipt of the unsolicited proposal, the implementing agency shall inform the PPP Center in writing of such receipt and furnish it with a copy of the proposal. The PPP Center shall provide assistance to the implementing agency in the evaluation of the unsolicited proposal.

Sec. 8. Approval of PPP Projects. – The approval of PPP projects under this Act shall be in accordance with the following:

a) *National PPP Projects* – National PPP projects shall be approved by the NEDA Board depending on the project cost as prescribed by the PPP Governing Board. Such approval shall be carried by the implementing agency or grantor concerned.

For national projects that have impact on the region, the implementing agency shall secure the endorsement of the Regional Development Council (RDC) prior to submitting the project for approval to the Approving Body. The RDC shall have thirty (30) days from receipt of the request of the implementing agency within which to issue its endorsement; otherwise, the same shall be deemed automatically endorsed by the RDC.

b) *Local Projects* – Local PPP projects shall be confirmed by the local development councils concerned and approved by the local Sanggunians.

The Approving Body shall assess all PPP projects based on its overall feasibility analysis and accord paramount importance on the affordability of user fees and efficiency in public service.

1 Sec. 9. *Project Development and Monitoring Facility (PDMF)*. – The Project
2 Development and Monitoring Facility is hereby created to be known as the PDMF, which
3 shall be used for the procurement of advisory and support services related to the
4 preparation, structuring, probity management, procurement, financial close, and
5 monitoring of implementation of PPP projects. The PDMF Fund referred to under
6 Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series
7 of 2013, shall be transferred to the PDMF herein created. The funding requirements of
8 the PDMF may be included in the General Appropriations Act, Official Development
9 Assistance or other sources of funding.

10 The PDMF shall be managed and administered by the PPP Center as a revolving
11 fund; thus, in addition to the amounts appropriated herein, and in order to sustain the
12 PDMF, the PPP Center may collect and receive fees and recover costs expended through
13 PDMF in accordance with the guidelines that shall be approved by the PPP Governing
14 Board. Such amount shall be retained and authorized to be used by the PPP Center for
15 the purposes indicated herein.

16 A PDMF Committee is hereby created which shall approve applications for PDMF
17 support submitted by implementing agencies. It shall be composed of representatives
18 from the NEDA, Department of Finance (DOF), Department of Budget and Management
19 (DBM) and the PPP Center.

20 To facilitate access to global best practices in PPP and enhance value for money,
21 the selection of consultants for project preparation and transaction support, and probity
22 advisors, all with PPP expertise, as well as independent consultants, and such other
23 consultancy services that may be financed through PDMF shall be open to qualified
24 consultancy firms, subject to existing laws on the practice of profession reserved to
25 Filipino nationals.

26 Subject to approval of the PPP Governing Board, the PDMF Committee shall also
27 formulate, prescribe and recommend policies, procedures and guidelines for the use of
28 PDMF and recovery of costs charged to the fund.

29 The PPP Center shall serve as Secretariat for the PDMF Committee.

30 Sec. 10. *Public Bidding of Projects*. – The public bidding of projects shall be in
31 accordance with the following:

1 A. *Publication.* – Upon approval of PPP projects as mentioned in Section 8
2 of this Act, the head of the implementing agency concerned shall immediately
3 cause the publication of a notice inviting all prospective project proponents to
4 participate in a transparent and competitive public bidding, once every week for
5 three (3) consecutive weeks, in at least two (2) newspapers of general circulation
6 and in at least one (1) local newspaper which is circulated in the region, province,
7 city or municipality where the project will be implemented. Said notice shall also
8 be posted continuously in the websites of the implementing agency and the PPP
9 Center.

10 B. *Public Bidding.* – The public bidding shall be conducted under a single or
11 two-stage system. The pre-qualification documents, technical, and financial
12 proposals shall be submitted in at least three (3) separate envelopes. The
13 procedures for public bidding, which shall be transparent and competitive,
14 including the conduct of one-on-one meetings with prequalified bidders, shall be
15 outlined in the IRR of this Act.

16 C. *Award.* – The contract shall be awarded to the bidder who has passed the
17 pre-qualification stage for having satisfied the minimum financial, organizational
18 and legal standards required by this Act, has passed the technical proposal
19 evaluation, and has submitted the most favorable financial bid based on the
20 parameters defined in the bid documents. Affordable user fees and efficient public
21 services shall be of paramount importance in awarding PPP projects.

22 D. *Single Complying and Responsive Bid.* – In case of a single complying and
23 responsive bidder, the implementing agency may award the PPP contract to that
24 bidder upon its compliance with the post-award requirements under the bidding
25 rules of the PPP project.

26 A bid shall be considered a single complying and responsive bid submission
27 if it falls under any of the following circumstances:

- 28 a) If, after advertisement, only one bidder applied for prequalification
29 and it meets the prequalification requirements, after which it is required to
30 submit a bid or proposal which is subsequently found by the implementing
31 agency to be complying;

1 b) If, after advertisement, more than one bidder applied for
2 prequalification but only one meets the prequalification requirements, after
3 which it submits a bid or proposal which is found by the implementing agency
4 to be complying;

5 c) If, after prequalification of more than one bidder, only one submits
6 a bid which is found by the implementing agency to be complying; or

7 d) If, after prequalification, more than one bidder submits bids but
8 only one is found by the implementing agency to be complying.

9 E. *Protest.* – In all stages of the procurement process, the following protest
10 protocol shall be strictly followed:

11 a) Decisions of the PPP Prequalification Bids and Awards Committee
12 (PPP PBAC) may be questioned by filing a motion for reconsideration within
13 fifteen (15) working days from receipt thereof.

14 b) The decision of the PBAC on the motion for reconsideration in the
15 immediately preceding paragraph may be further questioned by filing an
16 appeal to the head of the implementing agency concerned and paying a non-
17 refundable appeal fee in an amount equivalent to no less than one half ($\frac{1}{2}$)
18 of one percent (1%) of the project cost within fifteen (15) working days from
19 receipt thereof.

20 If the head of the implementing agency in the immediately preceding
21 paragraph is not a Department Secretary, the decision of the head of the
22 implementing agency may be further questioned by filing an appeal to the
23 Secretary of the Department to which the implementing agency is attached
24 within a period prescribed in the IRR of this Act.

25 c) The decision of the Department Secretary in the immediately
26 preceding paragraphs of item (b) may be questioned by filing an appeal to
27 the Office of the President within fifteen (15) working days from receipt
28 thereof.

29 In no case shall any appeal taken from any decision treated in this Act stay
30 or delay the bidding process: *Provided, however,* That all appeals must first be
31 resolved before any award is made.

1 F. *Failure to Comply or Execute the Contract.* – If the winning bidder fails to
2 comply with any post-award requirement or fails to enter into a contract with the
3 implementing agency, the latter may proceed to a negotiation with the next
4 technically and financially qualified bidder. This is without prejudice to other legal
5 remedies available to the implementing agency such as, but not limited to, the
6 forfeiture of bid security, the withdrawal of Notice of Award, or both.

7 Sec. 11. *PPP BAC.* – The head of the implementing agency shall create a PPP BAC
8 which shall be responsible for all aspects of the pre-bidding and bidding process in the
9 case of solicited proposals, and for the comparative bidding process in the case of
10 unsolicited proposals. The PPP BAC shall be chaired by at least a third ranking regular
11 official of the said agency and its composition shall be specified in the IRR of this Act:
12 *Provided,* That the PPP BAC constituted for National PPP Projects shall also include other
13 relevant government agencies as may be determined in the IRR of this Act.

14 Sec. 12. *Contract Termination.* – In the event that a contract is revoked, cancelled
15 or terminated, either contracting party shall compensate the other pursuant to terms
16 as defined in the contract.

17 Sec. 13. *Issuance of Administrative Franchise, License or Permit.* – Upon receipt
18 of notice that an implementing agency and a project proponent have entered in a PPP
19 contract, the regulator or licensing authority shall automatically grant in favor of the
20 said project proponent an administrative franchise, license, permit, or any other form
21 of authorization required for the implementation of a PPP project subject to submission
22 by the project proponent of the requirements by the regulator or licensing authority.

23 Any provision of law to the contrary notwithstanding, it shall be mandatory on the
24 part of the regulator or licensing authority to accept and approve the application for
25 administrative franchise, license or permit subject to submission by the project
26 proponent of the requirements by the regulator or licensing authority. Failure to act on
27 a proper and complete application thereof within thirty (30) working days from receipt
28 of the same shall be deemed as approval thereof.

29 Sec. 14. *Expansion or Extension of an Existing Infrastructure Facility.* – Subject to
30 prior approval by the appropriate Approving Body, the project proponent of an existing
31 PPP infrastructure facility may be allowed to expand or extend the same even without
32 further bidding: *Provided,* That the cost thereof shall not exceed twenty-five percent

1 (25%) of the price-adjusted original project cost: *Provided*, further, that any subsequent
2 expansion or extension shall no longer be allowed.

3 Sec. 15. *Contracts and Public Disclosure.* – Copies of all PPP contracts concluded
4 under this Act shall be considered public documents.

5 The implementing agency shall transmit to the PPP Center for recording and
6 monitoring purposes, a copy of the duly executed contract, within thirty (30) working
7 days from its complete execution.

8 Sec. 16. *Prohibition on the Issuance of Temporary Restraining Orders or*
9 *Injunctions.* –

10 A. No temporary restraining order, preliminary injunction or preliminary
11 mandatory injunction shall be issued by any court, except the Supreme Court,
12 against any implementing agency, its officials or employees, or any person or
13 entity, whether public or private acting under the government direction, to
14 restrain, prohibit or compel the following acts:

15 a) Bidding, rebidding or declaration of failure of bidding of PPP
16 projects, either national or local;

17 b) Qualification or disqualification of bidders;

18 c) Awarding of PPP contract;

19 d) Acceptance of any unsolicited PPP project proposal, even if not
20 acted upon by the implementing agency concerned under Section 9 of this
21 Act;

22 e) Acquisition, clearance, development of the right-of-way, site or
23 location of any PPP project;

24 f) Construction, operation and maintenance of any PPP project;

25 g) Commencement, execution, implementation, termination or
26 rescission of any PPP contract; and

27 h) Undertaking or authorization of any other lawful activity necessary
28 for such PPP project or contract.

29 B. Bond. – The applicant for such temporary restraining order, preliminary
30 injunction or preliminary mandatory injunction shall file a bond, in an amount to
31 be fixed by the court. The bond shall accrue in favor of the government if the
32 court should finally decide that the applicant was not entitled to the relief sought.

1 C. Void. – Any temporary restraining order, preliminary injunction or
2 preliminary mandatory injunction issued in violation of this section is void and of
3 no force and effect.

4 D. Application. – The foregoing prohibition shall apply in all disputes, cases,
5 or controversies instituted by any and all parties, including but not limited to cases
6 filed by bidders, implementing agencies or those claiming to have rights through
7 such bidders or implementing agencies involving PPP project or contract.

8 E. Liability. – In addition to civil and criminal liabilities as may be incurred
9 under existing laws, any judge who shall issue a temporary restraining order,
10 preliminary injunction or preliminary mandatory injunction in violation of this
11 section, shall be disciplined by the Supreme Court and suffer the penalty of
12 removal from office.

13 Sec. 17. *Regulatory Boards.* – No regulatory body shall be allowed to enter into
14 any PPP contract that they regulate: *Provided,* That a regulatory agency that owns
15 public infrastructure or right-of-way that is intended for a PPP project shall assign the
16 same to the department exercising administrative supervision over it, or to the
17 department to which it is attached, in order that such department may enter into a PPP
18 contract involving such public infrastructure or right-of-way.

19 Sec. 18. *Project Supervision and Monitoring.* – Every PPP project undertaken under
20 the provisions of this Act shall be in accordance with the designs, plans, specifications,
21 and standards as approved by the implementing agency, and the cost as approved by
22 the appropriate Approving Body. Such project shall be under the supervision of the
23 implementing agency concerned.

24 Sec. 19. *Projects of National Significance.* – Upon certification and
25 recommendation by the ICC, and prior consultation with the Department of Interior and
26 Local Government (DILG), the President may classify certain projects, such as toll road,
27 mass transit, water, sewerage and such other projects undertaken under this Act as
28 projects of national significance. All real properties which are actually, directly and
29 exclusively used for the projects shall be exempt from any and all real property taxes
30 levied under Republic Act No. 7160.

31 For a project to qualify as a project of national significance, it shall meet the
32 following criteria:

1 a) The project has a direct economic impact which should not be less than
2 the threshold set by the ICC;

3 b) The project has a direct positive impact on at least two (2) cities or
4 municipalities; and

5 c) The project can create new jobs.

6 Sec. 20. *Exemption from Payment of Transfer Taxes.* – For all PPP projects, the
7 transfer of ownership of infrastructure facility to the implementing agency shall be
8 exempt from capital gains tax, documentary stamp tax, donor's tax, and all national
9 taxes and fees related to the transfer thereof.

10 Sec. 21. *Institutionalization of PPP Center.* – To achieve the goals of this Act, the
11 PPP Center created under Executive Order No. 8, series of 2010, as amended by
12 Executive Order No. 136, series of 2013, is hereby institutionalized. It is hereby
13 authorized to adopt its current organizational structure, absorb its existing employees,
14 and upgrade its human resource component, as may be necessary, towards a more
15 efficient and effective performance of the following functions:

16 a) Assist implementing agencies in identifying, developing, prioritizing and
17 maintaining a pipeline of PPP projects;

18 b) Provide advisory services, technical assistance, trainings, and capacity
19 development to implementing agencies in all PPP-related matters;

20 c) Manage and administer the PDMF as provided in Section 8 of this Act;

21 d) Work with implementing agencies in setting procurement and
22 implementation timelines for approved PPP projects;

23 e) Recommend plans, policies and implementation guidelines related to PPP,
24 in consultation with appropriate oversight committees or agencies, implementing
25 agencies, private sector and other relevant stakeholders;

26 f) Facilitate, monitor, and evaluate the implementation of PPP programs and
27 projects developed by the implementing agencies;

28 g) Report to the Office of the President and Congress on the implementation
29 of the PPP programs and projects of the government at the end of each year;

30 h) Serve as a link between the government and the private sector;

31 i) Promote and market PPP programs and projects, in collaboration with
32 other government promotion agencies;

- j) Issue advisory opinions relating solely to technical aspects of PPP;
- k) Serve as the central repository of all executed PPP contracts and any subsequent amendment or supplement thereto, including settlement agreements, entered into by implementing agencies;
- l) Provide and transmit copies of duly executed PPP contracts to Congress;
- m) Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC insofar as PPP projects are concerned;
- n) Maintain an integrated projects' bank to serve as an interactive database of all current and past projects; and
- o) Such other functions as may be necessary to achieve the objectives and purposes of this Act.

The PPP Center shall report directly to the PPP Governing Board and under the administrative supervision of the NEDA.

The PPP Center shall be headed by an Executive Director with the rank equivalent to an Undersecretary, who shall be appointed by the President of the Philippines, upon recommendation of the PPP Governing Board. The Executive Director shall perform the following functions:

- a) Undertake the day-to-day management and supervise the operations of the PPP Center;
- b) Recommend to the PPP Governing Board such policies and measures which are deemed necessary for the effective exercise and discharge of the powers and functions of the PPP Center;
- c) Sit as an ex-officio, non-voting member of the PPP Governing Board, Infrastructure Committee (INFRACOM), ICC and other inter-agency bodies, except for regulatory boards, where a PPP project is a major concern; and
- d) Perform such other functions as may be assigned by the PPP Governing Board.

Sec. 22. PPP Governing Board. – The PPP Governing Board is hereby created and referred to as the Board, which shall be the overall policy-making body for all PPP-related matters, including the PDMF. It shall be responsible for setting the strategic direction of PPP programs and projects and in creating an enabling policy and institutional environment for PPP.

1 The Board shall be composed of the following:

2 a) Secretary of Socio-economic Planning as Chairperson;

3 b) Secretary of Finance as Vice-Chairperson;

4 c) Secretary of Budget and Management;

5 d) Secretary of Public Works and Highways;

6 e) Secretary of Transportation;

7 f) Secretary of Information and Communications Technology;

8 g) One (1) private sector representative from the field of architecture or
9 urban planning, recommended by the Philippine Institute of Architects/United
10 Architects of the Philippines/Philippine Institute of Environmental
11 Planners/Intelligent Community Forum Philippines;

12 h) One (1) private sector representative from the construction industry,
13 recommended by the Philippine Constructors Association (PCA);

14 i) One (1) private sector representative from the business sector,
15 recommended by the Management Association of the Philippines (MAP); and

16 j) One (1) private sector representative from the finance industry,
17 recommended by the Bankers Association of the Philippines (BAP).

18 The *ex-officio* members of the Board may designate their respective alternates,
19 with a rank not lower than assistant secretary or its equivalent, and whose acts shall be
20 considered as the acts of their principals.

21 The presence of the Chairperson with four (4) other members of the Board shall
22 constitute a quorum and a majority vote of the members present shall be necessary for
23 the adoption of any issuance, order, resolution, decision or other act of the Board in the
24 exercise of its functions. The Board shall act as a collegial body. In the conduct of
25 meetings, the Chairperson shall not vote except to break a tie.

26 The Board shall act on any matter for its consideration not later than thirty (30)
27 days from the date of submission thereof.

28 *Sec. 23. Mandatory Inclusion of Alternative Dispute Resolution (ADR) Mechanisms*
29 *in PPP Contracts.* – All PPP contracts shall include provisions on the use of ADR
30 mechanisms. The contracting parties shall be given complete freedom to choose which
31 venue and forum shall govern their dispute, as well as the rules or procedures to be
32 followed in resolving the same.

1 Sec. 24. *Miscellaneous Provisions.* –

2 a) Safeguard Mechanisms to Protect Public Interest. – In order to improve
3 transparency and to promote bankability and social acceptability of PPP projects,
4 the following mechanisms shall be observed:

5 i) Whenever applicable, the implementing agency shall assess the
6 affordability of fee or tariff, and conduct a willingness-to-pay survey
7 among the users of the infrastructure facility;

8 ii) The implementing agency shall conduct public consultation or
9 dialogue with all potential stakeholders, including the users, in all stages of
10 the PPP project; and

11 iii) The implementing agency and the PPP Center shall post in their
12 respective websites the approved starting fare or user fee in a PPP project
13 as well as the approved parametric formula on fare increases or adjustments,
14 if applicable.

15 b) Recovery of Investment. – As may be agreed in the PPP contract, the
16 project proponent may be allowed to collect tolls, fees, rentals, or charges, engage
17 in commercial development, receive viability gap funding, and receive direct
18 government payments, among others, to recover investment.

19 c) Wind-up and Transfer Measures. – The PPP contract shall provide, as
20 appropriate, for:

21 i) Mechanisms and procedures for the transfer of assets to the
22 implementing agency;

23 ii) The compensation to which the project proponent may be entitled
24 in respect of assets transferred to the implementing agency, or to a
25 successor, or purchased by the implementing agency;

26 iii) The transfer of technology required for the operation of the
27 infrastructure facility;

28 iv) The training of the implementing agency's personnel or of a
29 successor in the operation and maintenance of the infrastructure facility; and

30 v) The provision, by the project proponent, of a warranty that the
31 infrastructure facility meets the project technical specifications, agreed
32 system features, and performance standards and services for a certain period

as may be defined in the IRR of this Act after the transfer of the infrastructure facility to the implementing agency or to a successor.

d) Prescription. – No one shall in any proceedings before any court or tribunal allege the invalidity of any PPP contract on the ground of non-compliance with the provisions of this Act or its IRR after a period of one (1) year has elapsed from the signing of the PPP contract.

e) Construction. – If the person, whether or not the project proponent, that shall actually perform the construction of the infrastructure facility is a foreigner, such person shall hire Filipino employees throughout the period of construction.

f) Operation. – The person, whether or not the project proponent, who shall actually operate and maintain the infrastructure facility, including but not limited to the collection of tolls, fees, rentals or charges from users of the infrastructure facility, must be registered with the Securities and Exchange Commission.

Sec. 25. *Transitory Provisions.* – All unexpended funds for the calendar year, properties, equipment, contracts and records of the PPP Center are hereby retained. The amount necessary to carry out the organizational changes of PPP Center provided in this Act shall be determined by the PPP Governing Board. Appropriations for succeeding years shall be incorporated in its budget proposals for Congressional action.

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

Sec. 26. *Joint Oversight Committee.* – There is hereby created a Joint Congressional Oversight Committee to oversee the implementation of this Act. The Committee shall be composed of the Chairpersons of the Senate Committees on Public Works, on Finance, and on Economic Affairs, and the Chairpersons of the House Committees on Public Works and Highways, on Appropriations, and on Economic Affairs. To effectively monitor the implementation of this Act, the Philippine Development Plan (PDP) and the priority list of national and local projects shall be submitted to the Joint Congressional Oversight Committee.

Sec. 27. *Implementing Rules and Regulations.* – The members of the PPP Governing Board shall designate its representatives who shall constitute the IRR Committee. Within sixty (60) days from the effectivity of this Act, the IRR Committee shall formulate and prescribe, in consultation with the PPP Center, after public hearing

1 and publication as required by law, the rules and regulations to implement the
2 provisions of this Act. The IRR shall be approved by the PPP Governing Board.

3 From time to time the PPP Governing Board may instruct the IRR Committee, to
4 conduct, formulate and prescribe, in consultation with the PPP Center, after due public
5 hearing and publication, amendments to the IRR, consistent with the provisions of this
6 Act.

7 *Sec. 28. Separability Clause.* – If any portion or provision of this Act is declared
8 unconstitutional, the remainder of this Act or any provisions not affected thereby shall
9 remain in force and effect.

10 *Sec. 29. Repealing Clause.* – Republic Act No. 7718, Republic Act No. 6957, Sec.
11 3(a) of Presidential Decree (PD) No. 1112, Section 2 of PD No. 1894, and Executive
12 Order (EO) No. 08 (s. 2010) as amended by EO 136 (s. 2013), EO 78 (s. 2012), Section
13 8 of EO No. 423 (s. 2005), 2013 Revised Guidelines and Procedures for Entering Into
14 Joint Venture Agreements Between Government and Private Entities, Joint Venture
15 Guidelines issued by LGUs, and PPP Codes issued by LGUs, are hereby repealed. All
16 other laws, rules and regulations or parts thereof inconsistent with the provisions of this
17 Act are hereby repealed or modified accordingly.

18 *Sec. 30. Effectivity.* This Act shall take effect after fifteen (15) days following its
19 complete publication in the *Official Gazette* or in at least two (2) newspapers of general
20 circulation.

Approved,