

**TWENTIETH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
First Regular Session

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SENATE
S.B. No. 367

RECEIVED BY: 

Introduced by SEN. WIN GATCHALIAN

**AN ACT ENHANCING THE GOVERNANCE STRUCTURE OF THE ENERGY
REGULATORY COMMISSION**

EXPLANATORY NOTE

The enactment of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, carried with it the unbundling of the power sector. Generation, transmission, distribution, and supply were privatized. Nevertheless, distribution and transmission were declared public utilities. Their regulation, which includes performance, recoverable costs, and allowable margins, fell upon the Energy Regulatory Commission (ERC).¹

The ERC, as a regulator, plays an important role in ensuring that the interests of consumers are protected.² As such, its governance structure should foster independence, transparency, and accountability. However, an evaluation of ERC's governance structure using the country's Code of Corporate Governance for Publicly Listed Companies shows areas for improvement. An example is the separation of the Chairperson and Chief Executive Officer (CEO) functions, which is necessary to "foster an appropriate balance of power, increased accountability, and better capacity for independent decision-making."³ Similarly, ERC's existing governance structure lacks a clear delineation of powers and duties between the Chairperson as the CEO and the Commission *En Banc* with respect to important decisions such as the appointment of ERC Directors, the procurement of

¹ Sec. 43 of Republic Act No. 9136 or the Electric Power Industry Reform Act (2001)

² Sec. 2(j), Id.

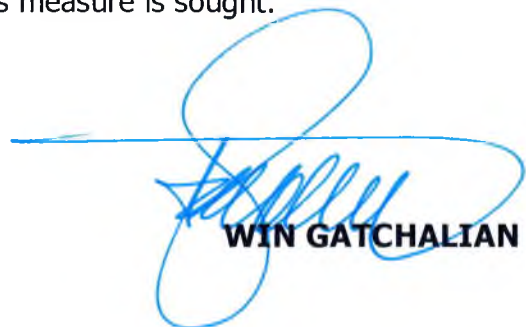
³ SEC Memorandum Circular No. 19, Series of 2016. Code of Corporate Governance for Publicly-Listed Companies. (22 November 2016)

services and equipment, and the preparation of the budget of the ERC.⁴ The ambiguity between roles and functions of ERC's key officials has been attributed to cause regulatory delays in the past.⁵ This is in contrast to other jurisdictions, such as the member countries of the Organization for Economic Cooperation and Development (OECD), which established sufficiently defined regulatory powers and functions to achieve a regulator's objectives.⁶

This measure aims to strengthen the governance structure of the ERC through the following: *First*, additional qualifications and requirements for ERC Commissioners to ensure board diversity; *Second*, prohibitions and disqualifications for ERC Commissioners and their relatives to prevent conflicts of interest; *Third*, separation of the Chairperson and CEO functions to ensure a balance of power; *Fourth*, defined duties and responsibilities of the Chairperson, the Commission, and the Executive Director to increase individual and board accountability; *Fifth*, open meetings of the Commission to guarantee public transparency; and *Sixth*, access to information to enhance knowledge and education on regulatory matters affecting public welfare.

The OECD recommends that countries "develop a consistent policy covering the role of functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence."⁷ It is the hope of the author that these objectives be fulfilled with the enactment of this bill into law.

Given the foregoing, the immediate passage of this measure is sought.



WIN GATCHALIAN

⁴ Transcript of Hearing of the Senate Committee on Energy Joint with the Committees on Civil Service, Government Reorganization and Professional Regulation; and Cooperatives. (14 February 2018) Pages 40 to 52

⁵ Transcript of Hearing of the Senate Committee on Energy Joint with the Committees on Civil Service, Government Reorganization and Professional Regulation; and Cooperatives. (16 January 2018) Pages 51 to 56

⁶ Organization for Economic Cooperation and Development (OECD): Principles for Role Clarity, Recommendation of the Council on Regulatory Policy and Governance (2012)

⁷ Organization for Economic Cooperation and Development (OECD): Recommendation of the Council on Regulatory Policy and Governance (2012)

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Senate Bill No. 367

Introduced by Sen. Win Gatchalian

**AN ACT
ENHANCING THE GOVERNANCE STRUCTURE OF THE
ENERGY REGULATORY COMMISSION**

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

CHAPTER I

GENERAL PROVISIONS

Section 1. *Title.* - This Act shall be known as the "Energy Regulatory Commission Governance Act."

Sec. 2. *Declaration of Policy.* - The State recognizes the significant role of the Energy Regulatory Commission (ERC) in ensuring transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency. Likewise, public interest demands the protection of consumers as they are affected by the rates and services of generation companies, electric utilities, and other electric power stakeholders. Towards this end, the State shall:

- a) Establish a strong, independent, transparent, and accountable regulatory body;
- and
- b) Institutionalize a system to ensure the efficient and effective performance of the functions and mandates of the regulatory body to enhance competitiveness in the electric power industry.

1 Sec. 3. *Scope.* - This Act shall enhance the existing governance mechanisms of
2 the ERC to foster independence, transparency, and accountability.

3 Sec. 4. *Definition of Terms.* - As used in this Act, the following words or term s
4 shall have the following meaning, unless provided otherwise:

- 5 a) Career Executive Service Eligibility refers to the eligibility conferred to a person
6 who passes the four-stage Career Executive Service (CES) Eligibility
7 Examination process and meets the other requirements prescribed by the
8 Career Executive Service Board;
- 9 b) Career Executive Service Officer (CESO) refers to a person with CES Eligibility
10 appointed by the President to a CES rank upon the recommendation by the
11 Career Executive Service Board;
- 12 c) Commission refers to the decision-making body of the ERC under Republic Act
13 No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001,
14 composed of one (1) Chairperson and four (4) Commissioners;
- 15 d) Consumer refers to all captive and contestable customers who buy electricity
16 either from a distribution utility (DU), a retail electricity supplier (RES), or a
17 generation company (Genco);
- 18 e) Deliberation refers to a communication between or among members of the
19 Commission in a meeting: *Provided, That* a quorum exists;
- 20 f) Electric power industry participant refers to any person or entity engaged in
21 the generation, transmission, distribution, or supply of electricity;
- 22 g) Key ERC personnel refers to employees who hold executive or managerial
23 positions in the ERC;
- 24 h) Meeting refers to a deliberation of the Commission with respect to any case,
25 issue, or matter within its jurisdiction; and
- 26 i) Public hearing refers to an official proceeding of a government agency during
27 which the public is accorded the right to express its position on the subject
28 matter at hand.

29
30 **CHAPTER II**
31 **COMPOSITION OF THE COMMISSION**

1 Sec. 5. *The Commission.* - The Commission shall be the sole governing body of
2 the ERC, and shall formulate its policies and direct its affairs.

3 All executive functions of the ERC shall rest on the Commission: *Provided, That*
4 such executive functions shall be limited to the duties and responsibilities enumerated
5 in Section 11 of this Act.

6 Sec. 6. *Qualifications.* - All members of the Commission shall be:

- 7 a) Natural-born citizens and residents of the Philippines;
- 8 b) At least thirty-five (35) years of age;
- 9 c) Of good moral character;
- 10 d) Of recognized probity and independence; and
- 11 e) Of distinguished competence in any of the following fields: energy, law,
12 economics, finance, commerce, engineering, or other experience relevant to
13 the energy sector with at least ten (10) years of active practice in their
14 respective fields of expertise.

15 No member shall have been a candidate for any elective national or local office
16 in the immediate preceding elections, whether regular or special: *Provided further,*
17 That one (1) shall be a lawyer, one (1) shall be an economist, one (1) shall be an
18 engineer, and one (1) shall be a certified public accountant or have a background in
19 finance

20 Sec. 7. *Requirements.* - The members of the Commission shall, upon assumption
21 of office:

- 22 a) Publicly disclose any employment, consultancy, or any connection with, and
23 any pecuniary interest in an electric power industry participant;
- 24 b) Publicly disclose if his or her spouse, partner, and any relative by
25 consanguinity or affinity within the fourth civil degree is employed or has a
26 consultancy or any connection with, or has any pecuniary interest in an electric
27 power industry participant;
- 28 c) Divest through sale or legal disposition any and all interests in an electric
29 power industry participant; and

1 d) Terminate employment or consultancy with any electric power industry
2 participant.

3 Sec. 8. *Prohibited Acts.* — The members of the Commission, within the duration
4 of their term, are prohibited from:

- 5 a) Taking up any employment or consultancy arrangement with any electric
6 power industry participant;
7 b) Holding any connection to and any pecuniary interest in an electric power
8 industry participant;
9 c) Holding any other office or employment; and
10 d) Directly or indirectly practicing any profession, participating in any business,
11 or be financially interested in any contract with, or any franchise, or special
12 privileges granted by the government or any subdivision, agency, or
13 instrumentality thereof, including government owned and controlled
14 corporations or their subsidiaries.

15 The members of the Commission, after the cessation of their service, are
16 prohibited from:

- 17 a) Running for office in the election immediately succeeding their cessation from
18 office; and
19 b) Personally appearing or practicing as counsel or agent on any matter pending
20 before the Commission for two (2) years following the cessation of their
21 service.

22 Any spouse, partner, and relative by consanguinity or affinity within the fourth
23 civil degree of the members of the Commission are prohibited from:

- 24 a) Taking up any employment or consultancy arrangement with an electric power
25 industry participant during the incumbency of the member of the Commission
26 to whom the spouse, partner, and relative concerned is related to;
27 b) Holding any connection to and pecuniary interest in any electric power
28 industry participant during the incumbency of the member of the Commission
29 to whom the spouse, partner, and relative concerned is related to;

1 c) Appearing as counsel or agent on any matter pending before the Commission
2 or transacting business directly or indirectly therein during the incumbency of
3 the member of the Commission to whom the spouse, partner, and relative
4 concerned is related to, and within two (2) years from cessation of their
5 service.

6 Sec. 9. *The Chairperson.* - The Chairperson shall be from any of the fields of
7 energy, law, economics, finance, commerce, or engineering with at least ten (10)
8 years of experience in energy and/or public utility regulation: *Provided,* That the
9 qualifications and requirements in Sections 6 and 7 of this Act are complied with.

10 Sec. 10. *Duties and Responsibilities of the Chairperson.* - The Chairperson shall:

- 11 a) Provide leadership direction for the Commission in matters such as but not
12 limited to development and determination of strategies and policies in order
13 to effectively comply with its mandate under Republic Act No. 9136;
14 b) Ascertain that the strategies and policies agreed upon by the Commission are
15 effectively implemented by the Executive Director;
16 c) Promote collaborative relationships and open communication between and
17 among members of the Commission;
18 d) Set, in consultation with other members of the Commission, the Executive
19 Director, and the Secretariat, the Commission's meeting schedule and agenda
20 to take full account of the important issues facing the Commission and the
21 concerns of management, and ensure that adequate time is available for
22 thorough discussion of each;
23 e) Ensure that the members of the Commission undergo capacity building
24 programs to continuously enhance technical competence, are properly briefed
25 on issues pending before the Commission, and receive, in a timely manner,
26 adequate, accurate, clear, complete, and reliable information to fulfil their
27 duties;
28 f) Preside over meetings of the Commission: *Provided,* That the Chairperson has
29 the right to vote on matters pending before the Commission;
30 g) Ascertain that all key and appropriate issues are discussed, deliberated upon,
31 and resolved by the Commission in a timely manner;

- h) Create an environment that allows constructive discourse during open meetings, executive sessions, and public hearings;
- i) Ensure that the Commission's decisions are in furtherance of its mandate under Republic Act No. 9136;
- j) Secure that the Commission avoids acts which unduly influence, impede, or hamper the Executive Director or any ERC employee from effectively fulfilling his or her duties and responsibilities; and
- k) Establish good corporate governance practices and procedures and promote the highest standards of independence, transparency, integrity, and probity.

Sec. 11. *Duties and Responsibilities of the Members of the Commission.* - In addition to the functions enumerated in Republic Act No. 9136, the members of the Commission shall:

- a) Regularly attend and actively participate in the meetings of the Commission where any case, issue, or matter within its jurisdiction is under consideration;
- b) Recommend to the Chairperson the inclusion in the agenda of any case, issue, or matter deemed appropriate in the performance of the Commission's functions;
- c) Be properly informed about and thoroughly analyze cases, issues, and matters pending before the Commission;
- d) Take part in continuous education and capacity building programs of the Commission to enhance technical competence;
- e) Abstain from acts which unduly influence, impede, or hamper the Executive Director or any ERC employee from effectively fulfilling his or her duties and responsibilities;
- f) Appoint the Executive Director of the ERC: *Provided*, That the requirements, prohibited acts, qualifications, and duties and responsibilities stated in Sections 7, 8, 12, and 13 of this Act are complied with;
- g) Act on the selection and appointment of Key ERG Personnel: *Provided* That the selection process for Key ERC Personnel must be in accordance with ERC's Enhanced Merit Selection Plan and /or other plans related to personnel selection duly approved by the Commission;

- 1 h) Review and act on the endorsement of the proposed ERC budget: *Provided,*
2 That such endorsement must come from the Executive Director and must be
3 substantiated with supporting documents;
- 4 i) Initiate, motu proprio or upon formal complaint, investigations against the
5 Executive Director and act upon these investigations: *Provided,* That such
6 investigation is without prejudice to the filing of administrative or criminal
7 cases against the Executive Director; and
- 8 j) Perform in good faith and to the best of its ability, the functions stated in
9 Republic Act No. 9136 and the duties and responsibilities specified in this Act.

10
11 **CHAPTER III**
12 **ERC OPERATIONS**

13 Sec. 12. *The Executive Director.* - The Commission, acting collectively, shall
14 appoint an Executive Director who shall act as the Chief Executive Officer of ERC until
15 resignation, retirement, or unless terminated earlier for cause. The Executive Director
16 who shall be a CESO of the ERC, shall have relevant experience in any of the fields of
17 law, economics, commerce, management, finance, or engineering for at least ten (10)
18 years, and shall be subject to the same requirements and prohibitions as indicated in
19 Sections 7 and 8 of this Act.

20 When an Executive Director who has rendered at least ten (10) years of service
21 in such capacity retires, such Executive Director shall receive retirement benefits
22 equivalent to the last salary plus representation and other allowances until the
23 concerned Executive Director's death.

24 Sec. 13. *Duties and Responsibilities of the Executive Director.* – The duties and
25 responsibilities of the Executive Director shall include but shall not be limited to:

- 26 a) Developing and proposing, for the Commission's approval, the
27 operationalization of the strategies and policies agreed upon by the
28 Commission;
- 29 b) Effectively executing the approved operationalization of the strategies and
30 policies agreed upon by the Commission;

- c) Leading the management of the daily operations of ERC in accordance with the plans and within the budget approved by the Commission;
- d) Assuming full responsibility for the overall supervision and control of all divisions, units, and services of the ERC;
- e) Assigning to each division, unit, and service of the ERC such duties that are considered necessary or expedient;
- f) Coordinating the workings of the divisions, units, and services of the ERC;
- g) Establishing a mechanism for capacity building for all employees of the ERC to continuously enhance technical competence: *Provided, That* such mechanism will be based on the principle of meritocracy;
- h) Ensuring compliance with the ERC's Enhanced Merit Selection Plan and/or other plans related to personnel selection duly approved by the Commission when it comes to the hiring and promotion of employees;
- i) Leading the management to ensure effective working relationships with the Commission by regularly communicating with the Chairperson to review key developments, issues, opportunities, and concerns;
- j) Ensuring that the management gives priority to providing documents and reports which contain relevant, accurate, timely, and clear information necessary for the Commission to fulfill its duties;
- k) Maintaining regular dialogue with the Commission while ensuring that the Commission, especially the Chairperson, is alerted to forthcoming complex, contentious, sensitive, or strategic issues facing the ERC;
- l) Advising the Commission on any matter referred to the Executive Director;
- m) Managing the affairs of the ERC in accordance with good corporate governance practices and procedures while promoting the highest standards of independence, transparency, integrity, and probity;
- n) Initiating investigations and recommending administrative sanctions against erring employees, without prejudice to the filing of any criminal action against the concerned employee;
- o) Regularly submitting to the Commission updates on the operations of ERC; and
- p) Performing such other duties as the Commission may assign.

1 All decisions of the Executive Director involving budgeting and disbursement of
2 funds shall be subject to the approval of the Commission.

3 4 **CHAPTER IV** 5 **TRANSPARENCY AND ACCOUNTABILITY**

6 Sec. 14. *Open Meeting.* - All meetings of the Commission shall be open to the
7 public: *Provided*, That the public may only participate during public hearings: *Provided*
8 *further*, That a live web streaming or any related technology of the open meeting shall
9 be posted: *Provided finally*, That the transcript of stenographic notes and minutes of
10 the open meeting shall be made available to the public, whether on the website or
11 any other platform, within one (1) week from the date of the open meeting.

12 The Commission, upon a majority vote, may decide to meet in an executive
13 session: *Provided*, That before going into an executive session, the Commission must
14 convene in an open meeting, identify the reason for the executive session while stating
15 all the subjects that may be revealed without compromising the purpose for which the
16 executive session was called, declare whether the Commission will reconvene in an
17 open meeting at the end of the executive session, and take a roll call vote to enter
18 into executive session.

19 Executive sessions may be called for the following reasons:

- 20 a) To discuss the discipline or dismissal of or complaints or charges brought
21 against a public officer, employee, or staff of ERC; and
22 b) To discuss trade secrets, confidential, competitively-sensitive, or other
23 proprietary information.

24 Sec. 15. *Public Notice of Open Meetings.* — The Commission shall provide the
25 public with notice of its meeting and the agenda at least seven (7) working days before
26 the scheduled date of the meeting: *Provided*, That for emergency meetings, the notice
27 may be posted within a reasonable time prior to the meeting: *Provided further*, That
28 public notices shall be posted in a manner easily accessible to the public such as but
29 not limited to actual and web posting.

1 Sec. 16. *Orders, Decisions, and Resolutions.* - All orders, decisions. and
2 resolutions shall undergo deliberations and once approved by the required number of
3 votes during open meetings, shall forthwith be promulgated within thirty (30) days
4 from date of the open meeting and published online in accordance with Section 18
5 hereof.

6 Sec. 17. *Support Desk.* - A support desk shall be made available to the public
7 which will supply assistance to consumers for a better understanding of all proceedings
8 and issuances of the Commission as well as any and all matters which affect the
9 electricity rates charged to consumers: *Provided,* That the matter shall not be
10 confidential information.

11 A new office may be created for this Support Desk should the Commission deem
12 it necessary.

13 Sec. 18. *Online Publication.* - All petitions, applications, and reportorial
14 requirements of electric power industry participants Electric Power Industry
15 Participants, including all annexes thereto, except for those considered as confidential
16 information, as well as orders, decisions, and resolutions of the Commission, shall be
17 posted on the ERC website within five (5) days from submission in the case of petitions,
18 applications, and reportorial requirements, or promulgation in the case of orders,
19 decisions, and resolutions.

20 Sec. 19. *Access to Information.* - Every consumer has a right to information and
21 shall, on request, be given access to any information of public concern under the
22 control of the Commission: *Provided,* That the access to information shall not be
23 granted if:

- 24 a) The information is considered confidential information under the ERC Rules of
25 Practice and Procedure;
- 26 b) The information consists of minutes or records of advice given, or of opinions
27 expressed during decision-making or policy formulation in the course of
28 executive sessions;

1 c) The information requested consists of drafts of orders, resolutions, decisions,
2 or memoranda of the Commission in the exercise of its regulatory function;
3 and

4 d) The information requested pertains to trade secrets, competitively sensitive,
5 or other proprietary information, whenever the revelation thereof would
6 prejudice the interests of a natural or juridical person in trade, industrial,
7 financial, or commercial competition.

8 Sec. 20. *Procedure of Access.* - Any person who desires to obtain information
9 shall submit, free of charge, a request to the Commission personally, by mail, or
10 through electronic means. Within fifteen (15) working days from the receipt thereof
11 or as soon as practicable, the Commission shall comply with the request: *Provided,*
12 That the period may be extended if a fortuitous event occurred, the information
13 requested requires a search of the Commission's field offices or an examination of
14 voluminous records, or other analogous cases.

15 Sec. 21. *Access and Processing Fees.* - The Commission may charge a reasonable
16 fee which shall in no case exceed the actual cost of reproduction, copying, or
17 transcription of the information requested: *Provided,* That the Commission may waive
18 the fees whenever it is satisfied that the person who requested is indigent or that the
19 cost of reproduction is negligible.

20 Sec. 22. *Exemption from Compliance.* - The Commission is excused from
21 complying with a subsequent identical or substantially similar request from the same
22 requesting party: *Provided,* That it has previously complied with a similar request for
23 information unless a reasonable interval has lapsed between compliance with the
24 previous request and the making of the current request.

25 Sec. 23. *Administrative Offenses and Penalties.* - Any ERC official or employee
26 who refuses to comply with Section 14 of this Act shall be suspended from service for
27 six (6) months and one (1) day to one (1) year without pay on the first offense, and
28 shall be dismissed from service and be perpetually disqualified from re-employment in
29 any government agency or instrumentality on the second offense.

Any ERC official or employee who refuses to comply with, or fails to perform the acts required within the specified period of time in Sections 15, 16, and 18, shall be reprimanded on the first offense, shall be suspended from service for one (1) to thirty (30) days on the second offense, and shall be dismissed from service and be perpetually disqualified from re-employment in any government agency or instrumentality on the third offense.

Any ERC official or employee who refuses to comply with, or fails to act on a request for information pursuant to Sections 19 and 20 of this Act shall be suspended from service for six (6) months and one (1) day to one (1) year without pay on the first offense, and shall be dismissed from service and be perpetually disqualified from re-employment in any government agency or instrumentality on the second offense.

Sec. 24. Criminal Offenses and Penalties. - The penalty of imprisonment of not less than one (1) month but not more than six (6) months and a fine ranging from ten thousand pesos (Php10,000.00) to one hundred thousand pesos (Php100,000.00) shall be imposed upon any ERC official or employee who:

- 1) Falsely denies or conceals the existence of information that is a proper subject for disclosure under Section 19 of this Act;
- 2) Destroys, or causes to be destroyed, information or documents being requested that is a proper subject of disclosure under Section 19 under this Act for the purposes of hindering the requesting party's access thereto;
- 3) Divulges or releases information covered by confidentiality under Sections 14 and 19 of this Act;
- 4) Divulges or releases information that is altered, tampered, or modified to the extent that the released information materially differs from the original contents of the document: *Provided*, That altering or modifying a document for the purpose of redacting exempt information from non-exempt information in a document shall not be punishable under this Section.

If the violation committed in this Act is induced by or assisted by a private individual or corporation, partnership, or any kind of juridical entity, the penalty provided herein shall be imposed on its executive officer or other officials responsible:

1 *Provided*, That the private individual or juridical entity shall suffer, in addition to the
2 penalties provided herein, the automatic revocation of its license to operate.

3
4 **CHAPTER IV**
5 **GENERAL PROVISIONS**

6 Sec. 25. *Transitory Provision*. - The current members of the Commission shall
7 continue to serve in such capacity until the completion of their term.

8 The qualifications, requirements, and prohibitions stated in Sections 6, 7, and 8
9 of this Act shall apply to new members of the Commission.

10 The current Chairperson shall immediately divest himself of his role and powers
11 as the Chief Executive Officer of the Commission upon the effectivity of this Act.

12 The current Executive Director shall assume the duties and responsibilities laid
13 out in Section 13 of this Act upon the effectivity of this Act: *Provided*, That upon such
14 assumption, the current Executive Director shall immediately comply with the
15 requirements and prohibitions stated in Sections 7 and 8 of this Act: *Provided further*,
16 That the current Executive Director shall serve as such until his resignation, retirement
17 or termination for cause.

18 Sec. 26. *Oversight Committee*. - Upon the effectivity of this Act, the Joint
19 Congressional Energy Commission established under Republic Act No. 9136 and
20 renamed under Republic Act No. 11285, otherwise known as the Energy Efficiency and
21 Conservation Act, shall exercise oversight powers over the implementation of this Act.

22 Sec. 27. *Separability Clause*. - If for any reason, any provision of this Act is
23 declared unconstitutional or invalid, the other parts or provisions hereof which are not
24 affected thereby shall continue to be in full force and in effect.

25 Sec. 28. *Repealing Clause*. - All laws, decrees, orders, rules and regulations or
26 parts thereof which are inconsistent with or contrary to the provisions of this Act are
27 hereby repealed, amended or modified accordingly.

28 Sec. 29. *Effectivity*. - This Act shall take effect fifteen (15) days after its
29 publication in the *Official Gazette* or in a newspaper of general circulation

30
31 Approved