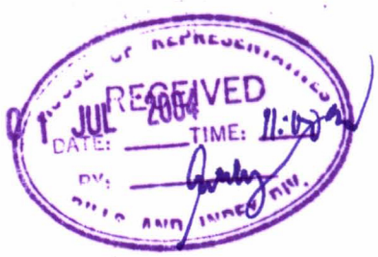
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Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



THIRTEENTH CONGRESS
First Regular Session

House Bill No. 741

Introduced By : Hon. Joseph Emilio A. Abaya

EXPLANATORY NOTE

The huge financial requirements of the government's development programs cannot be adequately sustained by its yearly budget. The government, therefore, have thought it necessary to seek out alternative sources of financing to ensure the prosecution of certain desirable infrastructure projects that complement the over-all national development efforts. Thus was born the BOT Law, based on the declared policy of the State which recognizes the indispensable role of the private sector as the main engine for national growth and development and provides the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the government.

The BOT Law, however, has done very little insofar as construction of roads is concerned. For more than twenty years after the construction of the north and south expressways, there has been little progress in the construction of other major highways. So far, there had been few proponents on road construction through the BOT scheme. The private sector has been observed to be very timid. They tend to shy away and would come in only when the project is clearly very lucrative. Cases in point are the private investors undertaking the Coastal Road and the South Skyway projects. These investors are, for sure, not by themselves financially self-sufficient. They also have to secure loans or borrow from various financial institutions to finance their projects. But they found the said projects lucrative or "sure-hit" projects where they are sure of realizing huge profits aside from the added incentives, like the reclamation component granted to the Coastal Road project proponent, provided by the Government under the BOT Law.

If a private or foreign investor who have to secure loans or borrow funds can undertake the construction or rehabilitation of an infrastructure project, maintain and operate it, collect toll fees for its use, pay its obligations and yet derive huge profits over a short period of time, why can't the Government do it? Indeed the Government, whose only motivation is "service", as contrasted to the private investor's "profit" is believed more acceptable and beneficial in undertakings like this. Given the same amount of financing, the Government can definitely construct more kilometers of roads than a private investor.

In view of the foregoing, this proposed Bill seeks to establish or create a corporate body which will be under the Office of the President and to be called the "Road Development Authority", hereinafter referred to as the Authority. The Authority shall be charged primarily for the construction and/or rehabilitation, maintenance and operation of selected and desirable infrastructure projects that complement the over-all national development efforts, where there are no takers from the private sector. The Authority shall be vested the power to raise and/or borrow the necessary funds from local and international financial institutions for the purpose of financing its projects and programs. In addition, the Authority shall be allowed to collect just and reasonable tolls, fees, rentals or charges for the use of said infrastructure projects such as but not limited to national highways, roads, bridges and public thoroughfares in order to pay for its obligations with its local or international financiers.

The creation or establishment of the Road Development Authority hopes to achieve the following objectives:

a. To maximize efficiency and economy in the construction of major highways, roads, bridges and public thoroughfares;

b. To ensure prosecution of certain infrastructure projects that complement the over-all national development efforts;

c. To ensure fast and safe movement of people, goods and services along major roads and highways to various points in the country;

d. To allow the Department of Public Works and Highways to concentrate its infrastructure projects in the rural areas.

For the foregoing reasons, the early passage of this Bill is earnestly sought.

JOSEPH EMILIO A. ABAYA.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
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AN ACT
CREATING A ROAD DEVELOPMENT AUTHORITY, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES

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

SECTION 1. Title - This Act shall be known as the "Road Development Act of 2004".

SECTION 2. Declaration of Policy - It is hereby declared the policy of the State to implement an integrated program for the planning, development, financing, construction, maintenance and operation of major highways and public thoroughfares all over the country to spur economic development.

SECTION 3. Creation of the Road Development Authority - There is hereby created a body corporate to be known as "Road Development Authority", hereinafter referred to as "Authority", which shall be attached to the Office of the President and charged primarily for the construction and/or rehabilitation, maintenance and operation of selected and desirable infrastructure projects that complement the overall national development efforts, where there are no takers from the private sector. The principal office of the Authority shall be located in Metropolitan Manila, but it may establish offices elsewhere in the Philippines as may become necessary for the proper and efficient conduct of its business.

SECTION 4. Powers and Functions of the Authority- a). The corporate powers of the Authority shall be as follows:

(i) To succeed in its corporate name;

(ii) To sue and be sued in such corporate name;

(iii) To adopt, alter, and use a corporate seal which shall be judicially noticed;

(iv) To create or alter its own organization and staff such an organization with appropriate and qualified personnel in accordance with what may be deemed proper and necessary to achieve the objectives of the Authority;

(v) To make or enter contracts of any kind or nature to enable it to discharge its functions under this Act;

(vi) To acquire, purchase, own, lease, mortgage, sell, or otherwise dispose of any land or property of any kind, whether movable or immovable;

(vii) To exercise the right of eminent domain, by expropriating the land or areas along proposed highways or public thoroughfares;

(viii) To construct, operate and maintain toll facilities in major roads, highways and public thoroughfares vested in or belonging to the Authority;

(ix) To collect, subject to the determination and approval of the Toll Regulatory Board , just and reasonable tolls, fees, rentals, or charges for the use of the toll facility;

(x) To reclaim, excavate, enclose, or raise any part of the lands vested in the Authority;

(xi) To raise and/or borrow, within the limitation provided by law, the necessary funds from local and international financial institutions and to issue bonds, promissory notes and other securities for that purpose and to secure the same by guarantee, pledge, mortgage, deed of trust, or assignment of its properties held by the Authority for the purpose of financing its projects and programs within the framework and limitations of this Act;

(xii) To do all such other things and to transact all such business directly or indirectly necessary, incidental or conducive to the attainment of the purposes of the Authority;

(xi) To exercise all the powers of a corporation under the Corporation Law insofar as they are not inconsistent with the provisions of this Act.

(b). The corporate functions of the Authority shall be as follows:

(i) To formulate, in coordination with the National Economic Development Authority and the Department of Public Works and Highways, a comprehensive and practicable major highways and public thoroughfares development plan for the State and to program its implementation;

(ii) To construct, maintain, operate and provide such facilities and services as are necessary in the major highways and public thoroughfares vested in, or belonging to the Authority;

(iii) To coordinate with the Bureau of Lands or any other government agency or corporation in the development of any foreshore area;

(iv) To exercise such powers as may be essential, necessary or incidental to the powers granted to it in the preceding sub-paragraph as well as to carry out the policies and objectives of this Act.

SECTION 5. Board of Directors - a) The corporate powers of the Authority shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board, which shall consist of the following:

(i) The Chairman of the Board and Administrator of the Authority who shall be appointed by the President of the Philippines to serve for a term of six (6) years, unless
sooner removed for cause. In case of removal for cause, the replacement shall serve only the unexpired portion of the term;

(ii) The Secretary of Public Works and Highways;

(iii) The Director-General of the National Economic Development Authority;

(iv) The Secretary of Transportation and Communications;

(v) The Secretary of Finance;

(vi) Two (2) other persons who shall be appointed by the President of the Philippines, representing the private sector, who by reason of their knowledge or experience are, in the opinion of the President, fit and proper persons to be director of the Board. They shall hold office for a period of three (3) years from the date of their appointment and shall be eligible for reappointment upon the completion of such period;

b) The Directors listed under sub-sections a), (ii) to (v) shall be ex-officio members of the Board of Directors; Provided, that, in their absence the Directors concerned shall designate the officer next in rank to them in their department or office to act on their behalf as Director;

c) The members of the Board or their respective alternates shall receive a per diem of not more than Five thousand Pesos (P5,000.00) for every Board meeting actually attended by them; Provided, however, that the per diem collected per month shall not exceed the equivalent of four (4) meetings; Provided, further that the amount of per diem shall not be increased within two (2) years after its last increase; and Provided finally , that the ex-officio members shall not be paid other allowances or any form of compensation, except actual expenses in traveling to or from their residences to attend Board meetings.

d) Chairman/Administrator - The President of the Philippines shall appoint a professional manager as Administrator of the Authority who shall be the Chairman of the Board and Chief Executive Officer of the Authority. He shall receive pay and allowances and privileges equal to that of a Department Secretary.

SECTION 6. Organizational Structure - The Administrator shall, subject to the approval of the Board, determine the organizational structure, the staffing pattern and the number of personnel of the Authority, define their duties and responsibilities, and fix their salaries and emoluments. For professional and technical positions, the Administrator shall recommend salaries and emoluments that are comparable to those of similar positions in other government-owned corporations, the provisions of existing rules and regulations on wage and position classification notwithstanding. The Administrator shall, subject to the approval of the Board, appoint and remove personnel below the rank of Assistant Administrator. The number of Assistant Administrators of the Authority shall in no case exceed three (3) who shall each receive a salary to be determined by the Board and approved by the President.

SECTION 7. General Powers and Duties of the Administrator and Assistant Administrators - a) General Powers and Duties of the Administrator- The Administrator shall be responsible to the Board and shall have the following powers, functions and duties:

(i) To implement, enforce and apply the policies, programs, guidelines, procedures, decisions, rules and regulations promulgated, prescribed, issued or adopted by the Authority;

(ii) To manage the day to day affairs of the Authority, and ensure the operational efficiency of all its offices;

(iii) To sign contracts, to approve expenditures and payments within the budget provisions, and generally to do all acts for the proper and efficient operations of the Authority;

(iv) To undertake research, studies, investigations and other activities and projects to support the preparation of plans for the infrastructure projects that has to be undertaken and submit the same for the information and approval of the Board;

(v) To negotiate with local and international financial institutions in order to raise and/or borrow the necessary funds to finance proposed infrastructure projects;

(vi) To perform such other duties as the Board may assign from time to time

b) General Powers and Duties of the Assistant Administrators - The Assistant Administrators shall be responsible to the Administrator of the Authority and shall have the following general powers, functions and duties:

(i) To assist the Administrator in implementing, enforcing, and applying the policies, programs, guidelines, procedures, decisions, rules and regulations promulgated, prescribed, issued, or adopted by the Authority;

(ii) To assist the Administrator in the performance of his other functions and duties;

(iii) To perform such other duties as the Administrator may assign from time to time.

SECTION 8. Capitalization - a) The Authority shall have an authorized capital of TEN (10) BILLION PESOS (P10,000,000,000.00).

b) The initial paid up capital shall consist of:

(i) Cash contribution by the Government in the amount of TWO HUNDRED MILLION PESOS (P200,000,000.00) a year for the next three (3) years, which is hereby appropriated out of any fund in the National Treasury not otherwise appropriated;

(ii) All other assets which the President may transfer to the Authority as part of the equity contribution of the Government.

SECTION 10. Borrowing Powers - a) The Authority may, after consultation with the Central Bank and the Department of Finance, and with the approval of the President of the Philippines, raise funds, either from local or international sources, by way of loans, credits or indebtedness or issue bonds, notes, debentures, securities, and other borrowing instruments, including the power to create pledges, mortgages, and other voluntary liens or encumbrances on any of its assets or properties.

b) The loans contracted by the Authority under this Section together with all interests and other sums payable in respect thereof, shall constitute a charge upon all the revenues and assets of the Authority and shall rank *pari passu* with one another, but shall have priority over any other claim or charge on the revenue and assets of the Authority:

Provided, That this provision shall not be construed as a prohibition or restriction on the power of the Authority to create pledges, mortgages and other voluntary liens or encumbrances on any property of the Authority.

c) Except as expressly authorized by the President of the Philippines, the total outstanding indebtedness of the Authority in the principal amount in local and foreign currency shall not at any time exceed the authorized capitalization of the Authority;.

d) The President of the Philippines, by himself or through his duly authorized representative, is further hereby authorized to guarantee in the name and on behalf of the Republic of the Philippines, the payments of loans or other indebtedness of the Authority up to the amount herein authorized.

e) All interests paid or payable by the Authority on its loans or other forms of indebtedness shall be exempt from taxes of whatsoever nature.

SECTION 10. Annual Accounts - a) the Board shall cause proper accounts and other records of the Authority in relation thereto to be kept. An annual statement of account shall be rendered in respect to each year. The Authority shall maintain such accounts and other records under a commercial system of accounting.

b) The accounts of the Authority shall be kept and made up to 31 December in each year.

c) The annual statement of accounts of the Authority shall present a true and fair value of the financial position of the Authority and of the results of the operations of the Authority for the year to which it relates.

SECTION 11. Auditor - a) The Commission on Audit (COA) shall be the full time auditor of the Authority. For this purpose, the COA shall designate its representative who shall perform the actual audit of the accounts of the Authority;

b) The Authority shall provide the COA representative and his/her staff with a suitable office space, supplies, equipment, furniture and other necessary operating expenses for its proper maintenance, including expenses for travel and transportation;

c) The salaries and allowances of the COA representative and his staff shall be paid directly by the COA from its own appropriations and other contributions;

d) The COA representative shall, as soon as practicable, but not later than three (3) months after the accounts have been submitted for audit, send an audit report to the Board. He/she may also submit such periodical or special reports to the Board as may to him/ her appear necessary.

SECTION 12. Annual Report - The Board shall submit to the President of the Philippines together with the Auditor's Report on the relevant accounts, an annual report generally dealing with the activities and operations of the Authority during the preceding year and containing such information relating to the proceedings and policies of the Authority.

SECTION 13. Separability Clause - If any provision of this Act shall be held unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force and effect.

SECTION 14. Repealing Clause - All laws, executive issuances, or parts thereof which are inconsistent herewith are hereby repealed or accordingly amended.

SECTION 15. Effectivity - This Act shall take effect upon its publication in at least two (2) newspaper of general circulation.

Approved.