

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



THIRTEENTH CONGRESS
1st Regular Session

HOUSE BILL NO. 2119

Introduced by **HON. JOSEPH EMILIO A. ABAYA**

EXPLANATORY NOTE

Joint ventures between and among corporations is among the most viable and acceptable corporate vehicles in undertaking projects in the Philippines, more particularly those involving large single transactions.

It is a corporate vehicle that is of common law origin. Its appeal to most conscientious investors is its facility in formation and dissolution, for right after it has achieved its corporate purpose, its corporate existence ceases. It has been observed likewise that it is the foreign corporations' preferred mode of transacting business in the Philippines, more particularly through joint ventures with domestic corporations.

This observation holds true, more particularly in the field of construction business, where contractors join together in order to participate in the bidding of large construction projects. A lot of reasons prompt the contractors to enter into joint ventures, primary of which is the pooling of their resources and expertise.

For the project proponents, whether from the private or the public, it is to their advantage to have a greater number of bidders. The greater the number of bidders, the more it is assured of receiving a more acceptable, reasonable and lower bids. For the government, this is in fact among the animating forces behind the passage of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act.

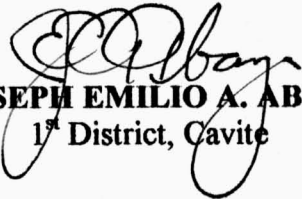
One of the primary reasons that impede the participation of joint ventures in the bidding of government construction projects is the licensing requirement. Republic Act 4566, otherwise known as the Contractors' Licensing Law, specifically prohibits in section 38 thereof the joint submission of a bid or acting in the capacity of a contractor of two or more licensees, each of whom has been issued a license to engage separately in the capacity of a contractor, without first having secured an additional license for acting in the capacity of such a joint venture.

At first glance, the provision's aim is noble in that it ensures that those who participate in the bidding of infrastructure projects are duly licensed and their capability is properly determined. Upon closer analysis, though, the requirement is counterproductive. It adds unnecessary, superfluous and excessive requirement for contractors who are already individually licensed, yet cannot participate through joint ventures without securing a separate license for the joint venture itself.

Further, considering that such joint ventures are formed to participate in the bidding of a specific and single construction project, and once they lose in the bidding, the same are automatically dissolved, what then is the necessity of requiring them to be licensed just to be able to participate in the bidding? Why require them to undergo the long, arduous and costly licensing process when the joint ventures are not even assured that they will be awarded the project?

Still, the need for a license of the joint venture may not be entirely dispensed with however. But the same must be required after they are announced winners in the bidding, and before the bid is actually awarded to them. In this way, we don't sacrifice competitive bidding and convenience of the already licensed contractors at the altar of various technical licensing requirements. Amendment to the licensing law is therefore in order.

Adoption of this bill is thus earnestly sought.


JOSEPH EMILIO A. ABAYA
1st District, Cavite

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AN ACT
AMENDING REPUBLIC ACT No. 4566, OTHERWISE KNOWN AS THE
CONTRACTORS' LICENSE LAW.

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

Sec. 1. Section 38 is amended to read as follows:

“Sec. 38. Joint licenses. – [It is unlawful for] Any two or more licensees, each of whom has been issued a license to engage separately in the capacity of a contractor, [to jointly submit a bid or otherwise act in the capacity of a contractor without first having secured an additional license for acting in the capacity of such a joint venture or combination in accordance with the provisions of this Act as provided for an individual, partnership or corporation] **MAY JOINTLY SUBMIT A BID OR OTHERWISE ACT IN THE CAPACITY OF A JOINT VENTURE PROVIDED THAT A LICENSE TO SO ENGAGE OR ACT AS A JOINT VENTURE IS SECURED BEFORE ITS BID IS CONSIDERED FOR AWARD.**”

Sec. 2. This Act shall take effect fifteen (15) days from its publication in the Official Gazette or in a newspaper of general circulation.

Approved,