

Republic of the Philippines
House Of Representatives
Quezon City, Metro Manila

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 3977



Introduced by Congressmen Mark O. Cojuangco

Explanatory Note

This bill seeks to impose a fifty centavo specific tax every short messaging service (SMS) to be borne by cellular phone companies for the purpose of generating the much needed funds - which will constitute a Special Infrastructure Fund - to upgrade, modernize and improve our country's infrastructures for economic vibrancy and social mobilization.

It is deemed important that SMS must be regulated being substantially foreign exchange-based industry hence competing with every other industry vis-a-vis our dollar reserves and contributing to our economic dependence on other countries. Also, SMS is the easiest source of revenue to alleviate our fiscal situation whereby each text sender shares in the burden of nation building. Further, it is also escapable and not mandatory. And, finally, the economic activity generated therefrom is about 75-85% entertainment and 25-15% legitimate.

Equally, if not the most important, economic advantage derivative of the passage of this bill is the influx of investments due to infrastructure development. The importance of infrastructure investments need not be belabored: infrastructure is a key engine to economic and social development. It provides the physical foundation for economic and social progress; the basic machinery to generate business activities through local and foreign participation; the opportunities for new jobs. In other words, infrastructure makes available growth-generating facilities to improve the nation's productive capacity, encourages the movement of goods and people, and opens up regions with vast resources human and otherwise.

Relatedly and sadly, the government's drive towards transforming the Philippines from a developing Asian frontier into a self-reliant, progressive industrialized country leaves much to be desired. The depressing state of the country's infrastructure is the culprit; turning off potential investors who, aside from looking for a globally competitive labor force, seek adequate infrastructure for profitable economic undertakings. For example, while our country has among the highest road density ratios in Asia, it still

has the worst traffic congestion in the region, particularly in its capital Manila. Our railway system has been in a steady decline. Philippine ports have remained run-down and inefficient in spite of the innovation in the water transport. Many of the country's airports are lacking in facilities and equipment that could place them at par with the other airports of the region and the world over. Not to mention, the country's power supply has remained unreliable and insufficient despite the restructuring effort made in the electric power industry.

In the process, the private sector has been disadvantaged. Despite the risks, it has survived through the years with inadequate infrastructure. That even after the turn of the millennium, the sector is still hounded with the same problem - the lack of adequate infrastructure. This has been the bone of contention especially among foreign funding agencies which continue to harp on the government's lack of priority to provide a conducive environment for foreign investment.

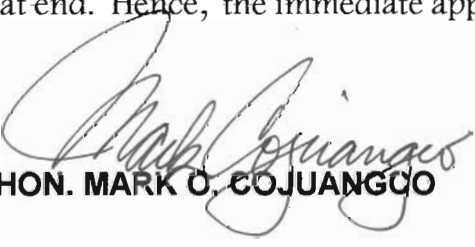
Necessarily, the government is mandated to provide the infrastructure requirement of the country. But due to its limited financial capacity, it has been unable to carry out such mandate. This has resulted to its inability to meet the large infrastructure investments required to meet the growing demands of various sectors.

What makes matter worse is the fiscal crisis that our country is seriously grappling with. Such betokens another year of limited government's investment on infrastructure. In fact, for the last four years, government's allocation for roads, bridges and other similar public works has been minimal, i.e., a mere one-sixth of what it should have spent on infrastructure development as prescribed under the Philippine Built-Operate-Transfer (BOT) Program. Efforts to encourage private sector participation in infrastructure provision in general has shown less success. Only a handful of private companies has ventured into such project due to government privatization policies perceived to place them under undue risks.

Hence, weak infrastructure is a major impediment to trade, competitiveness and sustainable economic and social development. It is inimical to growth and deters integration to the global economy.

Our country in order to ensure a continuous economic and social development must therefore narrow the huge gap in infrastructure development spending, lest we will continue to lag behind our progressive Asian neighbors.

This bill is one of the means to achieve that end. Hence, the immediate approval thereof is earnestly requested.



HON. MARK O. COJUANGCO

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HOUSE BILL NO. 3977

Introduced by Congressmen Mark O. Cojuangco,

AN ACT
IMPOSING A FIFTY CENTAVO (P0.50) SPECIFIC TAX ON (EXCLUDING
VALUE-ADDED TAX) SHORT MESSAGING SERVICE USING THE
CELLULAR NETWORK TO BE BORNE BY CELLULAR PHONE
COMPANIES, CREATING A SPECIAL INFRASTRUCTURE FUND FOR
PUBLIC WORKS PROJECTS, AND FOR OTHER PURPOSES

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

SECTION 1. *Creation of Special Infrastructure Modernization Fund for Public Works Projects.* - There is hereby created a special fund to be known as the Special Infrastructure Modernization Fund, hereinafter referred to as the Special Fund, to be administered by the Department of Public Works and Highways, and which shall be constituted from the proceeds of the tax imposed under this Act.

The revenues thereby generated shall be utilized to finance necessary modern infrastructure facilities designed to make local infrastructures to be at par with those of the progressive or developed nations of the world.

This Special Fund shall be expended exclusively for roads, bridges, acquisition of right-of-ways, flood control and drainage, and other ancillary infrastructure facilities which provide support services to the foregoing major public works projects: Provided, however, that not more than five percent (5%) of the allocated funds shall be used for design and other pre-engineering expenses by the implementing agency.



SECTION 2. *Expenditure of the Special Infrastructure Modernization Fund.* - Expenditure of the Special Infrastructure Modernization Fund shall be in pursuance of appropriation made by law.

SECTION 3. *Imposition of Infrastructure Modernization Tax on Short Messaging Service (SMS).* - There shall be levied, assessed, and collected on (excluding value added-tax) every short messaging service using the cellular phone network a fifty centavo (P 0.50) specific tax to be borne by cellular phone company acting as the provider thereof. The additional tax herein being imposed shall be separate and distinct from the income and value-added taxes which a cellular phone company remits or pays to the Bureau of Internal Revenue.

SECTION 4. *Prohibitive Act.* - It shall be unlawful for any cellular phone companies from imposing additional charges or fees to their subscribers in lieu of the imposition of the additional tax.

A violation of the immediately preceding paragraph shall make the cellular phone company liable to the payment of the amount of tax that is passed on to its subscribers, plus a surcharge of twenty-five percent (25%) of the total amount due.

SECTION 5. *Duration of the Tax Imposition.* - The tax imposed under the provisions of this Act shall be collected for a period of ten (10) years from the effectivity thereof.

SECTION 6. *Penal Provision.* - Any person who fails or refuses to turn over collections of the tax mentioned in this Act within the period prescribed by law, or who delays, obstructs or prevents the same; or who fails or refuses to effect releases from the Special Fund, or who delays, obstructs or prevents the same; or who orders, causes or effects the transfer or diversion of the collections of this Special Fund shall be punished by a fine in the amount of not less than fifty thousand pesos (Php50,000.00) but not more than one hundred thousand pesos (Php100,000.00) or suffer imprisonment of not less than three (3) years but not more than six (6) years or both at the discretion of the Court. If the offender is a government official or employee, he shall, in addition, be dismissed from the service with prejudice to reinstatement and with disqualification for election to any public office. If he is an alien, he shall, in addition, be deported after payment of fine, without further deportation proceedings.



SECTION 7. *Rules and Regulations.* - The Secretary of Finance, in coordination with the Secretary of the Department of Public Works and Highways, the Secretary of the Department of Transportation and Communications, and the Commissioner Bureau of Internal Revenue shall promulgate the necessary rules and regulations for the effective implementation of this Act.

SECTION 8. *Annual Report.* - The Secretary of the Department of Public Works and Highways shall, within fifteen days from the opening of the regular session of Congress, submit to the President of the Philippines, to the Senate President and Speaker of the House of Representatives, and to the Chairmen of the Committee on Ways and Means of both Houses of Congress, an annual report which shall include an account of the programs, projects and detailed expenses undertaken pursuant to this Act.

SECTION 9. *Separability Clause.* - If for any reason, any section or provision of this Act is declared to be unconstitutional, the other sections or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 10. *Repealing Clause.* - All laws, decrees, executive orders, rules and regulations, and other issuances, or any part thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

SECTION 11. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation whichever comes earlier.

APPROVED,

