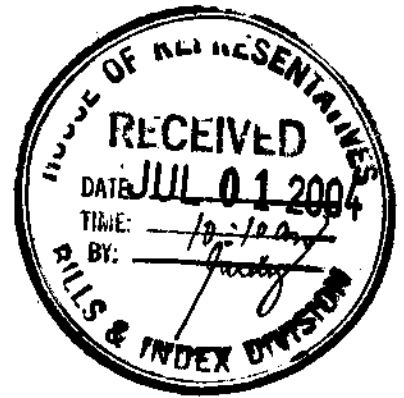


Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 130



Introduced by **Representative JOEY SARTE SALCEDA**

EXPLANATORY NOTE

This bill seeks to establish a competitively neutral government.

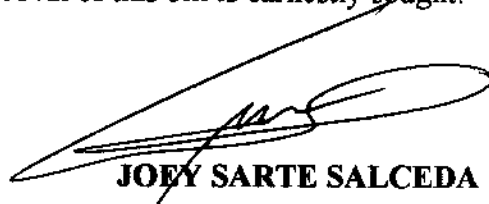
In an environment of resource constraints, competitive neutrality arrangements are intended to minimize resource allocation distortions arising out of public ownership of significant business activities and to improve the competitive processes.

Undeniably, despite its pronounced policy of privatization and deregulation, the State continues to compete for available economic resources in the system. This has resulted in resource allocation distortions occur because prices charged by significant government businesses need not fully reflect resource costs. Thus, the need for competitive neutrality arrangements.

To neutralize this advantage, government business activities should adopt measures on corporatization, imposition of full taxes, debt guarantee fees and regulation on an equivalent basis with the private sector. Consistent with reforms such as deregulation and privatization, the principle of competitive neutrality arrangements implement increased reliance on market-based mechanisms and competition to promote efficiency and to enhance consumer welfare.

As an affirmative policy, this measure compels government to achieve business success as a result of their own merits and intrinsic strengths and not as a consequence of unfair advantages by virtue of government ownership.

From the foregoing reasons, immediate approval of this bill is earnestly sought.


JOEY SARTE SALCEDA

Republic of the Philippines
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House Bill No. 130

Introduced by Representative JOEY SARTE SALCEDA

**AN ACT
ESTABLISHING THE RULES FOR A COMPETITIVELY NEUTRAL GOVERNMENT
AND FOR OTHER PURPOSES**

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

SECTION 1. *Title.* - This Act shall be known as "The Government Competitive Neutrality Act of 2004."

SEC.2. *Declaration of Policy.* - It is the policy of the State to minimize the distortions on resource allocation arising from public ownership of entities engaged in significant business activities. The State realizes that government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. The State shall also inhibit itself from directly competing with existing private enterprises as it endeavors to pursue the principle of a competitive neutral policy.

SEC.3. *Definitions.* - For purposes of this Act, the following shall have its definitions:

- a) Government Owned and Controlled Corporations (GOCCs) -agencies, entities, subsidiaries and/or instrumentalities wholly or partly owned by the Government of the Republic of the Philippines engaged in significant business activities;
- b) significant business activity - as used in this Act, shall be defined using the following criteria:
 - (i) there must be user-charging for goods and services;
 - (ii) there must be an actual or potential competitor (either in the private or public sector) i.e. users are not restricted by law or policy from choosing alternative sources of supply; and
 - (iii) managers of the activity have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.
- c) subsidy - as used in this Act, shall refer to the following:

- (i) reasonable estimates of foregone government revenues arising from tax incentives, such as but not limited to duty-free importation of capital equipment and raw materials, tax credits, tax holidays, tax breaks and tax shields arising from accelerated depreciation of fixed assets and net operating loss carry over (NOLCO), granted to government agencies with significant business activities. This shall include the incremental interest costs or foregone interest income arising from such revenue losses;
- (ii) foregone income arising from debt condonation, debt restructuring, debt moratorium and concessional loans granted by government financial institutions (GFIs) such as but not limited to the Development Bank of the Philippines (DBP), Landbank of the Philippines (LBP) and the Philippine National Bank (PNB) to government agencies with significant business activities.
- (iii) the foregone interest income or additional interest costs arising from advances and other accommodations by the Bangko Sentral ng Pilipinas (BSP) on bailouts of government financial institutions which shall be computed on the outstanding balance and the difference between the average overnight lending rate of the BSP and the interest rate on the accommodation during the period covered;
- (iv) costs arising from government loan guarantee granted to government agencies with significant business activities by government agencies such as but not limited to the Small Business Guarantee and Finance Corporation (SBGFC), Guarantee Fund for Small and Medium Enterprises (GFSME) and the Quedan and Rural Credit Guarantee Corporation (QUEDANCOR) which shall be computed as premium revenues and recoveries less costs of operations and net reimbursements / payments to participating private and government banks;
- (v) the actual cost of servicing loans guaranteed by the National Government or its agencies for such cases as Philippine Phosphate Fertilizer Corporation and the Philippine Associated Smelting and Refining Corporation;
- (vi) the implied cost of national government (NG) guarantees for loans incurred by government-owned and operated corporations (GOCCs), particularly the National Power Corporation (NAPOCOR), including and other acquired/sequestered firms which shall be computed on the outstanding contingent liability and the difference between the average Philippine Interbank Offering Rate (Phibor) for the period and the average carrying interest rates for peso-denominated loans and the difference between average yields on comparable instruments of the domestic private enterprises and the carrying interest rates for foreign-denominated loans;
- (vii) direct or indirect costs to government on Build-Operate-Transfer projects as provided under Republic Act No. 7718 as amended or the BOT Law;

(viii) all other forms of subsidy which may be defined or identified by the Steering Committee.

SEC.4. *Competitive Neutrality Arrangements.* - The following shall be defined as competitive neutrality arrangements:

- a) prohibition of fiscal and legislative powers to the advantage of government businesses over the private sector;
- b) prohibition of subsidies to government agencies;
- c) prohibition of exemption from any form of taxes;
- d) prohibition of access to borrowing at concessional interest rates;
- e) prohibition of exemptions from complying with regulatory arrangements imposed on private sector competitors and other benefits associated with not having to achieve a commercial rate of return on assets.

SEC.5. *Rate of Return Requirements.*- Notwithstanding the provisions of Section 4 of this Act, government agencies with significant business activities are specifically required to achieve, over time, as a minimum benchmark, economic rates of return on equity for their commercial operations plus an appropriate margin for risk equivalent to parallel existing business activities of the private sector. The required rate of return shall be identified by the Steering Committee on the Performance Monitoring of Government Businesses.

SEC.6. *Exemption.* - The competitive neutrality arrangements shall not apply to non-profit activities of government agencies nor shall it require government to restructure the delivery of social programs into competitive market based mechanisms such as competitive tendering and contracting or voucher systems; *Provided, however,* that whenever a government agency adopts a service delivery mechanism with the involvement of a government service provider, the competitive neutrality arrangements will apply to the government service provider.

SEC. 7. *Compliance Mechanism.*- Upon the effectivity of this Act, competitive neutrality arrangements shall be enforced after a period of two (2) years. Thereafter, all government agencies with significant business activities shall report to the Steering Committee for the appraisal and review of their:

- a) ownership and operating principles;
- b) funding costs;
- c) regulatory arrangements; and
- d) tax exemptions.

After such review, the Steering Committee shall submit and recommend to the President the appropriate competitive neutrality arrangements; *Provided,* that any such recommendation for competitive neutrality arrangements shall apply to all government agencies with significant business activities.

SEC.8. *Steering Committee on the Performance Monitoring of Government Businesses.*- To carry out the objectives of this Act, there is hereby created a Steering Committee on the Performance Monitoring of Government Businesses which shall have the following powers and authority:

- (a) To monitor all competitive neutral arrangements and other incentive programs being granted by the government benefiting public entities;
- (b) To provide the rules, regulations and the procedures for the reporting of the competitive neutrality arrangements;
- (c) To analyze, report and recommend policies, on the aggregate level and sectoral determination of competitive neutrality arrangements, to the President, the Congress as well as to pertinent government agencies;
- (d) To develop an annual as well as a 6-year competitive neutrality arrangement strategy in coordination with the National Economic Development Authority (NEDA) , the Department of Finance (DOF) and the Department of Trade and Industry (DTI) after consultation with the representatives of the private sector and non-government organizations;
- (e) To recommend indicative ceilings, in coordination with the NEDA and in consultation with the concerned agency, on the rate of requirements for government agencies with significant business activities and to seek clarification from the concerned agency when such ceilings are substantially exceeded;
- (f) To set up a complaints mechanism to respond to concerns of government businesses not complying with competitive neutrality arrangements and investigate such concerns when necessary;
- (g) To recommend to the President competitive neutrality arrangements for a government agency as may be considered, after proper deliberations and consultation with the Committee; and
- (h) To set and implement a system of negative clearance or other voluntary compliance mechanisms for government agencies and their constituent firms;

SEC.9. *Composition.*- The Steering Committee shall be composed of a Chairman, two Vice-Chairmen and four (4) members who shall initially be appointed by the President. The composition shall be as follows:

Chairman- Secretary of the Department of the Trade and Industry;

Vice-Chairman- Secretary of the Department of Finance;

Vice-Chairman- Representative from the private sector;

Members - Representative from the academe;

- Two representatives from the private sector; and

- One member from a Government-owned and controlled corporation;

SEC. 10. *Qualification.* - The Chairman and his members shall be natural born citizens of the Philippines, at least forty (40) years of age, of recognized probity and integrity and competence in the field of

law, economics finance, banking, commerce, industry, and/or consumer welfare and must not have been a candidate for an elective national or local office in the immediate preceding election, whether regular or special.

SEC. 11. *Term of Office.* - The Chairman and his members shall serve for a period of 1 (one) year. After their initial term of office, they shall elect among themselves the officers and members of the Steering Committee. In the event a vacancy occurs during the incumbency of any Member, such vacancy shall be filled only for the unexpired portion of the term.

In no case shall the Chairman or any of his members be designated or appointed in a temporary or acting capacity.

SEC. 12. *Meetings; Notice; Quorum.* - The Steering Committee shall meet as often as may be necessary on such days as the Chairman or his absence a majority of the members may fix. The notice of meeting shall be given to all members at least three (3) days before the scheduled date of the meeting. The presence of at least four (4) shall constitute a quorum. In the absence of the Chairman, either of the Vice-Chairmen shall act as the presiding officer of the meeting.

SEC. 13. *Secretariat.* - To assist the Steering Committee in the implementation of this Act there will be a Secretariat with a staff and personnel to be determined by the Council in coordination with the Department of Budget and Management (DBM) and subject to the approval of the President. This would include at least ten (10) policy analysts. The Secretariat shall be headed by an Executive Director who shall be appointed by the President, upon the recommendation of the Chairman, and shall have the rank of an Assistant Secretary. He shall act as the Secretary of the Committee and shall be responsible for the effective implementation of the policies, rules and standards promulgated by the Committee ; to coordinate and supervise the activities of the different operating units; to report to the Chairman the operations of such units and to perform such functions as may be assigned to him by the Chairman/ or the Committee.

SEC. 14. *Penalties.* - Imposition of Administrative Fines. - Failure to comply with the provisions of this Act shall mean imposition of Administrative fines in such amount deemed reasonable by the Committee, which, in case of an official of a government agency, shall not be less than Three Hundred Thousand Pesos (300,000.00) nor more than Five Hundred Thousand Pesos (500,000.00) and other administrative penalties as provided for under the Administrative Code of 1987.

SEC. 15. *Appropriations.* - The amount necessary to carry out the provisions of this act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 16. *Repealing Clause.* - All laws, decrees, orders, rules and regulations and all other issuance or parts thereof inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

SEC. 17. *Separability Clause.* - If any part or provision of this Act is held unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall remain in full force and effect.

SEC. 18. *Effectivity Clause.* - This Act shall take effect immediately upon publication in the Official Gazette or at least two (2) newspapers of general circulation.

Approved,