

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3559

Introduced by Rep. BERNADETTE HERRERA-DY

EXPLANATORY NOTE

The second quarter of the Philippine Fiscal year of 2010 saw the increase of 0.6 percent foreign debt stock, or an increase of 28 billion pesos giving rise to a total government stock of Php4.582 trillion by June of 2010. With a population estimated to reach some 94.01 million this year, Filipinos would have a share of Php50,859 from the country's total outstanding debt. This debt stock represent at least 56.5 percent of the Philippine economy, as measured by the gross domestic product or the total value of goods made and services rendered within the country.

Php1.986 trillion or at least 43.4 percent of the country's outstanding debt had been booked in foreign currencies such as the US dollars, the Euro and the Japanese Yen. Aside from loans extended by multilateral lenders and official aids from foreign governments, the Philippines also borrowed internationally through the issuance of bonds denominated in these currencies. More so, the continuous depreciation of the Philippine peso as against the US dollars accounts for the increase of Php9Billion on foreign debt stock.

The prevailing economic policy, in addressing this problem, has been a mixture of increasing taxes, increasing domestic or foreign borrowings, privatization of some government assets, promotion of investments and development, calibrating the National Budget and maintaining economic equilibrium on the basis of what is available. But just like all other developing countries, tighter fiscal policy reduces economic growth, making the country's default inevitable. The increasing public-debt service costs is a serious and debilitating matter as it cuts deeply into our country's limited resources for economic and social services and affects our credit standing, capacity to grow and ability to deal with poverty. Following the model of other countries, and recently that of

Argentina, there is, however, an opportunity to reduce, if not eliminate, our foreign debt - that is through Debt Swaps.

Indeed, developing countries have been undertaking debt swaps for more than 20 years. Ever since Chile conducted the first debt for equity swap in 1985, some fifty countries have undertaken debt swaps with different aims. Debt Swaps have the advantage of reducing debt, creating a positive impact on a country's balance of payments, promoting investments and increasing funding for development programs.

It is therefore, about time that the Philippine Government considers a policy shift when it comes to managing, if not totally, eliminating our foreign debt. With the creation of Debt-Swap Council, it is hoped that a total business plan for the debt-reduction will be created. This proposed measure, moreover, subjects the bidding process to the so-called "Swiss Challenge", that will help encourage private sector initiative in core sector projects. In this way, the government allows third parties better offers/challenges for a project during a designated period with a simple objective to discourage frivolous project/s, or to avoid exaggerated project development costs.

Hence, the immediate passage of this bill is earnestly requested.



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**AN ACT CREATING A DEBT-SWAP COUNCIL 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 Debt-Swap Law of 2010.

Section 2. Declaration of State Policy. - The State recognizes the need for a sound public fiscal policy that will ensure the people's right to quality life and basic social services. With the increasing foreign debt services which accounts to more than half of the country's budget, other important functions of the government, especially social services had been substantially diminished. Towards this end, the state shall promote fiscal policies that will ensure adequate social services, promote full employment, a rising standard of living and an improved quality of life for all.

Section 3. Debt-Swap Council. - To ascertain the reduction of the country's foreign debt through "*debt-swapping*", a "Debt-Swap Council" shall be created under the Department of Finance.

Section 4. Composition. - The Council shall be composed of representatives from the following government and non-government agencies:

- a) Department of Finance, as the Chairman;
- b) Department of Budget and Management;
- c) Department of Trade and Industry;
- d) Department of Agriculture;
- e) Department of Environment and Natural Resources;
- f) Department of Health;

- g) Department of Tourism;
- h) Department of Transportation and Communications;
- i) Department of Energy;
- j) National Economic and Development Authority;
- k) Four (4) representatives from non-government organizations of nationwide base to be chosen by the President from among the nominees submitted by the various non-government organizations in the Philippines; and
- l) Two (2) representatives from business/industry sector to be chosen by the President from among the nominees submitted by the various business organizations.

Section 5. *Functions of the Chairman.* - The Council shall be headed by the Secretary of Finance as the Chairman. He shall establish, with the concurrence of the Council, the policies, procedures and standards to govern the implementation and interpretation of the functions and duties of the Council.

Section 6. *Per Diems of Members* - The members of the Council shall be entitled to an allowance of Five thousand pesos (P5,000.00) per meeting actually attended but not more than ten thousand pesos (P10,000.00) a month.

Section 7. *The Secretariat.* - The Council shall appoint an Executive Director who shall assist the Chairman and act as Secretary of the Council. The Department of Finance shall provide the Secretariat which shall assist the Council in the effective performance of its functions.

Section 8. *Powers and Functions of the Debt-Swap Council.* - The Council shall have the following powers and functions:

a) Identify the country's debt which could be converted, the prospective foreign investments or projects and its' executing agencies. In doing so, the Council, may look into, among others, the country's external debt profile, existing governmental policies, potential funding sources for the swap and financial and design issues for the swap.

b) Identify assets or real rights which could be offered for swapping. Assets which may be the subject of swapping shall include but shall not be limited to, exploration rights for oil, mineral explorations and development, reforestation of denuded lands, development of new agricultural lands and infrastructures, development of natural energy sources, development of industrial and touristic zones, development of climate change mitigating measures and development of other natural resources.

c) Craft the proposals for swapping which shall include, determining the appropriate, debt-payment mechanism to be used, the amount of debt eligible for redemption, payment schedule, projects to be funded, financial structure for channeling debt-swap proceeds and supervision and evaluation of uses of funds.

d) Enter into debt-conversion agreements with creditors who won through public bidding as indicated in Section 9 hereof or through an unsolicited offer subjected to "**Swiss challenge**" under the rules to be established by the Council

e) Set up an oversight committee to monitor implementation of agreements entered into, including the use of proceeds from said agreements.

f) And such other powers as may be needed in the exercise of the Council's mandates and functions.

Section 9. Public Bidding and Unsolicited Offers subject to Swiss Challenge. - All projects for debt-swapping crafted by the Council shall be published, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation and in at least one (1) local newspaper which is circulated in the region, province, city or municipality in which the project is to be implemented inviting all duly qualified creditors/, non-government organizations, development organizations or other third parties to participate in a public bidding for the project in question. The Council shall promulgate the rules and regulations to be followed in the conduct of such public bidding and processing of unsolicited offers subject to Swiss Challenge.

Section 10. Types of Debt Swaps. - The Council shall consider, but shall not be limited to the following debt-swap schemes:

a) **Debt-for-equity swaps** wherein external debt shall be exchanged into local currency for equity investment in the country.

b) **Debt-for-development swaps** wherein a development organization purchases sovereign debt at a discount and negotiates with the Government to exchange the debt at par or at an agreed discount for local currency funding for a development project approved by the Council.

c) **Debt-for-environment swaps** wherein external debt is exchanged for local currency funding for nature conservation and environmental protection.

Section 11. Guiding Principles for Debt Swapping. - In crafting projects for debt-swap, the Council must be guided by the following principles:

- a) The assignment of any asset or real right must not violate the Constitution or any law;
- b) Debt swaps must support the country's investment priorities and used to attract additional investments;
- c) Debt swaps must be undertaken through the coordination of various government agencies; and
- d) Debt swaps can be designed to promote participation by civil society in funding and administering development or environmental programs.

Section 12. *Implementing Rules and Regulations.* – The Council shall, within one hundred twenty (120) days from the effectivity of this Act, promulgate rules and regulations necessary to effectively implement its provisions.

Section 13. *Separability Clause.* – If any provision of this Act or any part thereof be declared unconstitutional or invalid, the other provisions, as far as they are separable from the invalid ones, shall remain in force and effect.

Section 14. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

Section 15. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,