

NEPTALI M. GONZALES II

6 HOUSE OF REPRESENTATIVES

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8 H.B. No. 4151
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12 Introduced by Representative Feliciano R. Belmonte, Jr. and
13 Representative Neptali M. Gonzales II
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16 **AN ACT FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 6957,**
17 **AS AMENDED BY REPUBLIC ACT 7718, ENTITLED " AN ACT AUTHORIZING**
18 **THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF**
19 **INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER**
20 **PURPOSES," APPROPRIATING FUNDS FOR THE SAID PURPOSE, AND FOR**
21 **OTHER PURPOSES**
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23 *Be it enacted by the House of Representatives and Senate in Congress*
24 *assembled:*
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26 **SECTION 1. Amendment.** – Sec. 4-A of Republic Act 6957, as amended by
27 Republic Act 7718, is hereby amended to read as follows:
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29 **"SEC. 4-A. Unsolicited Proposals.** – Unsolicited proposals for projects
30 may be submitted. The government agency, GOCC or local government
31 unit concerned may either:
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33 (1) Use the unsolicited proposal as the basis for Public Bidding as
34 provided in Section 5 of this Act. If a final award to a winning
35 bidder is made on the basis of the unsolicited proposal within
36 one (1) year from the submission thereof, as determined by
37 NEDA, the original proponent of the unsolicited proposal may be
38 reimbursed for costs incurred in its preparation, including, but
39 not limited to, the cost of any feasibility studies undertaken.
40 Provided: such reimbursement : (1) shall be in the amount to be
41 determined by NEDA, but not exceeding three percent (3%) of
42 the total project cost, excluding any project costs which will be
43 borne by the government, such as, but not limited to, the cost of
44 Right-of-Way acquisitions; and (2) shall be paid in full by the
45 winning bidder as a requirement for the award of the project;
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47 (2) Accept the unsolicited proposal on a negotiated basis: Provided,
48 That, all the following conditions are met: (1) such projects
49 involve a new concept in technology and/or are not part of the
50 list of priority projects, (2) no direct government guarantee,
51 subsidy or equity or any form of payment or security from the
52 government is required as provided in the immediately
53 succeeding section, and (3) the government agency or local
54 government unit has invited by publication, for three (3)
55 consecutive weeks, in a newspaper of general circulation,
56 comparative or competitive proposals and no other proposal is

received for a period to be determined by NEDA, but not to exceed one (1) year: *Provided, further, That in the event another proponent submits a proposal lower in price, the original proponent shall have the right to match that price within thirty (30) working days; or*

(3) Reject the proposal."

SECTION 2. A new section is hereby added after Section 4-A of the same Act and numbered as Section 4-B, to read as follows:

"SEC. 4-B. *Prohibition Against Government Guarantees or Payments.* – Notwithstanding any agreement to the contrary, the project proponent of an unsolicited proposal accepted by the government on a negotiated basis in accordance with Section 4-A(2) above shall not, at anytime, be entitled to any form of payment or security from the government, including, but not limited to, cost sharing, credit enhancement, direct or indirect government guarantee, subsidy or equity."

SECTION 3. A new section is hereby added after Section 10 of the same Act and numbered as Section 10-A, to read as follows:

"SEC. 10-A. *Projects of National Significance.* - Upon the certification and recommendation of NEDA, the President may classify certain projects undertaken under this Act as Projects of National Significance, which shall be entitled to the following incentives:

- a. All real properties which are actually and directly used for the project shall be exempt from any and all real property taxes levied under Republic Act No. 7160
- b. The total of all local taxes imposed by a province, city or municipality in Metro Manila pursuant to Republic Act No. 7160 on the project proponent shall not exceed fifty percent (50%) of one percent (1%) of gross sales or receipts of the preceding calendar year;
- c. The necessary business permits, including any renewals thereof, shall be deemed to have been automatically granted or issued to the winning project proponent upon tender of the required taxes and fees to the appropriate local government unit.

For purposes of this section, in order for a project to qualify as a Project of National Significance, the following conditions must occur:

1. The total cost of the project is at least PhP 5 billion_____00; and
2. The project is located in or affects at least two (2) provinces."

SECTION 4. Sections 11, 12, 13, 14, and 15 of the same Act are hereby renumbered as Sections 12, 13, 14, 15 and 16, respectively.

SECTION 5. A new section to be numbered as Section 11 is hereby added to read as follows:

1 **"SEC. 11. Prohibition on the Issuance of Temporary Restraining**
2 **Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. —**
3 No court, except the Supreme Court, shall issue any temporary restraining
4 order, preliminary injunction or preliminary mandatory injunction against
5 the government, or any of its subdivisions, officials or any person or entity,
6 whether public or private, acting under the government's direction, to
7 restrain, prohibit or compel the following acts with regard to Projects of
8 National Significance under the immediately preceding section:
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- 10 a. Acquisition, clearance and development of the right-of-way and/or
11 site or location;
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13 b. Bidding or awarding;
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15 c. Commencement, prosecution, execution, implementation and
16 operation;
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18 d. Termination or rescission of the contract; and
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20 e. The undertaking or authorization of any other lawful activity
21 necessary or in connection with the execution or implementation of
22 the project.
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24 This prohibition shall apply in all cases, disputes or controversies instituted
25 by a private party, including, but not limited to, cases filed by bidders or
26 those claiming to have rights through such bidders involving projects of
27 national significance. This prohibition shall not apply when the matter is of
28 extreme urgency involving a constitutional issue, such that unless a
29 temporary restraining order is issued, grave injustice and irreparable injury
30 will arise. The applicant shall file a bond, in an amount to be fixed by the
31 court, which bond shall accrue in favor of the government if the court
32 should finally decide that the applicant was not entitled to the relief sought.
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34 Any temporary restraining order, preliminary injunction or preliminary
35 mandatory injunction issued in violation of this section is void and of no
36 force and effect."
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38 **SECTION 6. Special Fund.** - A Special Fund is hereby created to defray the
39 cost of compensation to project proponents which enter into BOT contracts, concession
40 agreements or other contractual agreements with any national government agency or
41 GOCC pursuant to the provisions of Republic Act No. 6957, as amended, in the event
42 that the government agency or GOCC fails to comply, or is prevented from complying,
43 with its obligations under the aforementioned contracts or agreements as a result of any
44 act of another agency or branch of government; *Provided*, no compensation shall be
45 paid out of the Special Fund if the contract or agreement has been determined to be
46 unlawful or unconstitutional by a final judgment of a court of competent jurisdiction.
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48 For the initial year of implementation of this Act, the sum of
49 _____ pesos (PhP_____.00) is hereby appropriated for the
50 [Special Fund] and charged against [source]. Thereafter, the [Special Fund] may be
51 replenished or increased by such amount as may be deemed necessary in the General
52 Appropriations Act.
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54 **SECTION 7. Repealing Clause.** — All laws or parts of any law, including
55 Republic Act Nos. 7160 and 8975, orders, rules and regulations or parts thereof
56 inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

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2 **SECTION 8. *Separability Clause.*** — If any provision of this Act is held invalid,
3 the other provisions not affected thereby shall continue in operation.
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5 **SECTION 9. *Effectivity Clause.*** — This Act shall take effect fifteen (15) days
6 after its publication in at least two (2) newspapers of general circulation.
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8 Approved,