



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

Sixteenth Congress

First Regular Session

House Bill No. 2022



Introduced by **HON. ROMEO M. ACOP**

EXPLANATORY NOTE

The function of modern and efficient infrastructures in the economic development of the country is crucial and an imperative. These goods and services generate benefits which justify their traditional provision by the government. However, chronic budgetary deficits have compelled the government to turn to the private sector for funding of public infrastructures. Republic Act No. 6957, also known as the 'Build-Operate-and-Transfer' (BOT) Law, as amended by Republic Act No. 7718, serves as the statutory basis for the public-private-partnership (PPP) program of the government.

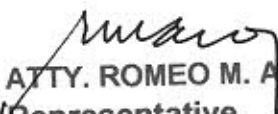
Following the enactment of the law, increased private investments through the BOT-PPP program spawned a number of infrastructure projects mostly in the power and transport sectors. However, the program's momentum slowed down due to legal and procedural problems encountered in the implementation of the projects. There were also reports of corruption and abuse of discretion on the part of public officials of concerned agencies involved in the transactions. These negative experiences with the implementation of the BOT Law necessitate the need to address various issues relating to the legal framework of the law, on instituting ample protection to the investments infused by the private sector, and on the responsibilities of the participating institutions involved in the project cycle.

This measure proposes the following policy and procedural amendments to the law :

- 1) Facilitating the mitigation of risks attached to private investments by ensuring that the validity and enforceability of contracts involving BOT projects are respected through due process of law;
- 2) The government should secure private investments through open and competitive bidding procedures permitting non-competitive procedures, such as unsolicited proposals, only in exceptional circumstances allowed in the law. However, it may be used as basis for public bidding by the concerned government agency and the original proponent may be reimbursed by the winning bidder of its necessary and reasonable costs such as expenses for feasibility studies;
- 3) Before the awarding of contracts to the private proponents, implementing agencies and approving bodies must satisfy themselves that the project specifications and parameters agreed upon have been faithfully observed. With this objective, the approval of the contract shall be strictly subject to review and shall primarily be in consideration of the draft contract, feasibility study and similar documents submitted for the purpose. Reviewing officers found violating this provision may be held administratively liable for dereliction of duty, while private proponents and their representatives may be criminally liable for similar or conspiratorial acts;
- 4) While the government and the private sector may agree on project-specific risks-sharing schemes, commercial and market risks that appropriately belong to the private sector, particularly revenue losses or shortfalls, must not be covered by government guarantees. Guarantees create contingent liabilities which imply future claims for payments that would burden the fiscal standing of the government;
- 5) Granting the President the authority to classify infrastructure projects as 'Projects of National Significance' which will entitle the proponents to incentives such as exemption from real property taxes and automatic grants of business permits. The status also insulates the projects from being subject to judicial relief; and,

- 6) Finally, to promote transparency in governance, signed contracts and related documents, being imbued with public interest, should be made available to the general public.

For the foregoing reasons, the immediate passage of this bill is earnestly urged.


ATTY. ROMEO M. ACOP MNSA
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AN ACT
STRENGTHENING PUBLIC-PRIVATE PARTNERSHIP (PPP)
IN INFRASTRUCTURE AND DEVELOPMENT PROJECTS,
FURTHER AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 6957, AS
AMENDED, OTHERWISE KNOWN AS AN 'ACT AUTHORIZING THE FINANCING,
CONSTRUCTION AND OPERATION AND MAINTENANCE OF INFRASTRUCTURE
PROJECTS BY THE PRIVATE SECTOR'

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

SECTION 1. Section 1 of Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as an 'Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector', is hereby further amended to read as follows :

SECTION 1. Declaration of Policy - It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and

development and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include **MITIGATION OF RISKS BY ENSURING THAT THE VALIDITY AND ENFORCEABILITY OF CONTRACTS ARE RESPECTED THROUGH DUE PROCESS OF LAW, AND** providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector. **IT SHALL ALSO BE THE POLICY OF THE GOVERNMENT TO SECURE PRIVATE INVESTMENTS THROUGH TRANSPARENT AND COMPETITIVE SELECTION PROCESSES AND BIDDING PROCEDURES : PROVIDED, THAT NON-COMPETITIVE PROCEDURES SHALL ONLY BE PERMITTED IN EXCEPTIONAL CIRCUMSTANCES AS ALLOWED UNDER THIS ACT.**

SECTION 2. Section 4 of Republic Act No. 6957, as amended by Republic Act No. 7718, is hereby further amended to read as follows :

SECTION 4. *Priority Projects* - All concerned government agencies, including government-owned and controlled corporations and local government units, shall include in their development programs those priority projects that may be financed, constructed, operated and maintained by the private sector under the provisions of this Act. It shall be the duty of all concerned government agencies to give wide publicity to all projects eligible for financing under this Act, including publication in national and, where applicable, international newspapers of general circulation once every six (6) months and official notification of project proponents registered with them.

The list of all such national projects must be part of the development programs of the agencies concerned. The list of projects costing up to Three Hundred Million pesos (P 300,000,000) shall be submitted to the ICC of NEDA for its approval and to the NEDA Board for projects costing more than Three Hundred Million pesos (P 300,000,000). The list of projects submitted to ICC of the NEDA Board shall be acted upon within thirty (30) working days.

The list of local projects to be implemented by the local government units concerned shall be submitted, for confirmation, to the municipal development council for projects costing up to Twenty Million pesos, those costing above Twenty up to Fifty Million pesos, to the provincial development council; those costing up to Fifty Million, to the city development council; above Fifty Million up to Two Hundred Million pesos, to the regional development councils; and those above Two Hundred Million pesos, to ICC of NEDA[.]; **PROVIDED, THAT THE CONFIRMATION OF THE PROJECT BY THE LOCAL DEVELOPMENT COUNCIL CONCERNED SHALL BE BASED ON A REVIEW OF THE PROJECT DOCUMENTS SUBMITTED TO IT BY THE LOCAL GOVERNMENT UNIT CONCERNED, WHICH SHALL INCLUDE, BUT NOT LIMITED TO THE FEASIBILITY STUDY AND THE DRAFT CONTRACT ON THE PROJECT,**

AND SHALL ENSURE THAT SAID PROJECT DOCUMENTS ARE IN FULL COMPLIANCE WITH THE REQUIREMENTS SET FORTH UNDER THIS ACT AND ITS IMPLEMENTING RULES AND REGULATIONS; *PROVIDED FURTHER*, THAT ANY CONCERNED REVIEWING OFFICER/S FOUND IN VIOLATION OF THIS PROVISION SHALL BE ADMINISTRATIVELY LIABLE WITH GRAVE NEGLIGENCE OF DUTY AND SHALL BE DEALT WITH IN ACCORDANCE WITH EXISTING LAWS.

ANY ACT ON THE PART OF THE LOCAL GOVERNMENT UNIT CONCERNED AND ITS RESPONSIBLE OFFICIALS, OR CONCERNED OFFICERS OF THE PRIVATE PROJECT PROPONENT, WHICH RESULTS TO OR IS AIMED AT DOWNGRADING THE CATEGORY OF THE PROJECT BASED ON ITS TOTAL COST UNDER THIS SECTION FOR THE PURPOSE OF EVADING THE REQUIRED APPROVAL UNDER THE APPROPRIATE CATEGORY SHALL BE DEALT WITH ADMINISTRATIVELY AND CRIMINALLY UNDER THIS ACT AND OTHER EXISTING APPLICABLE LAWS. SUCH ACT COMMITTED BY THE PRIVATE PROJECT PROPONENT AND ITS CONCERNED OFFICERS SHALL CAUSE THE RESCISSION OF ITS CONTRACT FOR THE SAID PROJECT WITHOUT COMPENSATION AND SHALL BE PERPETUALLY DISQUALIFIED FROM PARTICIPATING IN ANY BIDDING, OR OTHER CONTRACTUAL ARRANGEMENT, FOR ANY GOVERNMENT PROJECT.

SECTION 3. Section 4-A of Republic Act No. 6957, as incorporated by Republic Act No. 7781, is hereby amended to read as follows :

SECTION. 4-A *Unsolicited Proposals* - Unsolicited proposals for projects may be [accepted] **SUBMITTED.** THE [by any] government agency, GOCC, or local government unit [on a negotiated basis] concerned may either :

- 1) **USE THE SOLICITED PROPOSAL AS THE BASIS FOR PUBLIC BIDDING AS PROVIDED IN SECTION 5 OF THIS ACT. IF A FINAL AWARD TO A WINNING BIDDER IS MADE ON THE BASIS OF THE UNSOLICITED PROPOSAL WITHIN ONE (1) YEAR FROM THE SUBMISSION THEREOF, AS DETERMINED BY NEDA, THE ORIGINAL PROPONENT MAY BE REIMBURSED FOR COSTS INCURRED IN ITS PREPARATION, INCLUDING, BUT NOT LIMITED TO, THE COST OF ANY FEASIBILITY STUDIES UNDERTAKEN : *PROVIDED*, SUCH REIMBURSEMENT :**
 - A) **SHALL BE IN THE AMOUNT TO BE DETERMINED BY NEDA, BUT NOT EXCEEDING THREE PERCENT (3%) OF THE TOTAL PROJECT COST, EXCLUDING ANY PROJECT COSTS WHICH WILL BE BORNE BY THE GOVERNMENT, SUCH AS, BUT NOT LIMITED TO, THE COST OF RIGHT-OF-WAY ACQUISITIONS; AND,**
 - B) **SHALL BE PAID IN FULL BY THE WINNING BIDDER AS A REQUIREMENT FOR THE AWARD OF THE CONTRACT;**

2) **ACCEPT THE UNSOLICITED PROPOSAL ON A NEGOTIATED BASIS** : *Provided*, that all the following conditions are met :

- 1) xxx
- 2) xxx
- 3) xxx

3) **REJECT THE PROPOSAL.**

SECTION 4. A new section is hereby added after Section 6 of Republic Act No.6957, as amended by Republic Act No. 7718, and numbered as Section 6-A, to read as follows :

SECTION 6-A PROHIBITION AGAINST GOVERNMENT GUARANTEES OR PAYMENTS - NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY, IN NO CASE SHALL THE NATIONAL GOVERNMENT OR LOCAL GOVERNMENT UNIT CONCERNED GUARANTEE OR COMPENSATE ANY LOSS OR SHORTFALL IN THE PROJECTED REVENUES OR INCOME OF THE PROPONENT AS INDICATED IN THE APPROVED CONTRACT OR AS ADJUSTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT. NOR SHALL ANY PROPONENT, AT ANYTIME, BE ENTITLED TO ANY FORM OF SECURITY FROM THE GOVERNMENT, INCLUDING BUT NOT LIMITED TO, COST SHARING, CREDIT ENHANCEMENT, DIRECT OR INDIRECT GOVERNMENT SUBSIDY OR EQUITY.

SECTION 5. A new section is hereby added after Section 10 of Republic Act No. 6957, as amended by Republic Act No. 7718, and numbered as Section 10-A, to read as follows :

SECTION 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 :

- 1) 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, OTHERWISE KNOWN AS THE 'LOCAL GOVERNMENT CODE OF 1991';
- 2) THE TOTAL OF ALL LOCAL TAXES IMPOSED BY A PROVINCE, CITY OR MUNICIPALITY PURSUANT TO REPUBLIC ACT NO. 7160 ON THE PROPONENT SHALL NOT EXCEED FIFTY PERCENT (50%) OF ONE PERCENT (1%) OF GROSS SALES OR RECEIPTS OF THE PRECEDING CALENDAR YEAR;

- 3) 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 BE PRESENT :

- 1) THE TOTAL COST OF THE PROJECT IS AT LEAST FIVE BILLION PESOS (P 5,000,000,000); AND,
- 2) THE PROJECT IS LOCATED IN OR AFFECTS AT LEAST TWO (2) PROVINCES.

SECTION 6. Sections 11, 12, 13, 14 and 15 of Republic Act No. 6957, as amended, are hereby renumbered as Sections 13, 14, 15, 16 and 17 respectively.

SECTION 7. A new section to be numbered as Section 11 is hereby added to read as follows :

SECTION 11. PROHIBITION ON THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS AND PRELIMINARY MANDATORY INJUNCTIONS - NO COURT, EXCEPT THE SUPREME COURT, SHALL ISSUE ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION OR PRELIMINARY MANDATORY INJUNCTION AGAINST THE GOVERNMENT, OR ANY OF ITS SUBDIVISIONS, OFFICIALS OR ANY PERSON OR ENTITY, WHETHER PUBLIC OR PRIVATE, ACTING UNDER THE GOVERNMENT'S DIRECTION, TO RESTRAIN, PROHIBIT OR COMPEL THE FOLLOWING ACTS WITH REGARDS TO PROJECTS OF NATIONAL SIGNIFICANCE :

- 1) ACQUISITION, CLEARANCE AND DEVELOPMENT OF THE RIGHT-OF-WAY AND/OR SITE OR LOCATION;
- 2) BIDDING OR AWARDING;
- 3) COMMENCEMENT, PROSECUTION, EXECUTION, IMPLEMENTATION AND OPERATION;
- 4) TERMINATION OR RESCISSION OF THE CONTRACT; AND,
- 5) THE UNDERTAKING OR AUTHORIZATION OF ANY OTHER LAWFUL ACTIVITY NECESSARY OR IN CONNECTION WITH THE EXECUTION OR IMPLEMENTATION OF THE PROJECT.

THIS PROHIBITION SHALL APPLY IN ALL CASES, DISPUTES OR CONTROVERSIES INSTITUTED BY A PRIVATE PARTY, INCLUDING, BUT NOT LIMITED TO, CASES FILED BY BIDDERS OR THOSE CLAIMING TO HAVE RIGHTS THROUGH SUCH BIDDERS INVOLVING PROJECTS OF NATIONAL SIGNIFICANCE ; *EXCEPT*, WHEN THE MATTER IS OF EXTREME URGENCY INVOLVING A CONSTITUTIONAL ISSUE, SUCH THAT UNLESS A TEMPORARY RESTRAINING ORDER IS ISSUED, GRAVE INJUSTICE AND IRREPARABLE INJURY WILL ARISE. THE APPLICANT SHALL FILE A BOND, IN AN AMOUNT TO BE FIXED BY THE COURT, WHICH BOND SHALL ACCRUE IN FAVOR OF THE GOVERNMENT IF THE COURT SHOULD FINALLY DECIDE THAT THE APPLICANT WAS NOT ENTITLED TO THE RELIEF SOUGHT.

ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION OR PRELIMINARY MANDATORY INJUNCTION ISSUED IN VIOLATION OF THIS SECTION IS VOID AND OF NO FORCE AND EFFECT.

SECTION 8. A new section to be numbered as Section 12 is hereby added to read as follows :

SECTION 12. *PENAL PROVISIONS* - ANY PERSON WHO COMMITS ANY OF THE ACTS HEREUNDER PROSCRIBED SHALL BE PUNISHED WITH IMPRISONMENT FROM A MINIMUM OF THREE (3) YEARS TO A MAXIMUM OF SIX (6) YEARS :

- A) REPRESENTATION BY A PROJECT PROPONENT THAT IT HAS THE NECESSARY CAPITALIZATION TO COMMENCE, COMPLETE AND IMPLEMENT THE PROJECT WHEN THE SAME IS FALSE IN MATERIAL RESPECTS;
- B) FALSIFICATION OR INSERTION OF CERTAIN PROVISIONS IN THE FINAL CONTRACT WHICH ARE MATERIALLY AND SUBSTANTIALLY DIFFERENT FROM THE APPROVED DRAFT CONTRACT WHICH FORM PART OF THE GOVERNMENT AGENCY'S / LGUS REQUEST FOR APPROVAL OR CONFIRMATION.

SECTION 9. *Separability Clause*. - If any provision of this Act is declared invalid or unconstitutional, the provisions not affected thereby shall continue to be in full force and effect.

SECTION 10. *Repealing Clause*. - All laws, decrees, orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 11. *Effectivity Clause*. - 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.

Approved.