

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

SIXTEENTH CONGRESS
Second Regular Session

House Bill No. **5517**



Introduced by Magdalo Party-List Representatives
Hon. Francisco Ashley L. Acedillo and Hon. Gary C. Alejano

EXPLANATORY NOTE

Republic Act 6957 declares that it is the 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 favourable incentives to mobilize private resources for the purpose. It is seen as a pioneering law in the region enticing participation of the private sector in major government infrastructure projects.

Recently, the Philippines moved seven (7) notches higher in the World Economic Forum's (WEF) Global Competitiveness Index 2014-2015. The Philippines ranked 52nd out of 144 economies this year, up from its 59th spot among 148 countries in 2013. Notably, the country's gain of 33 places since 2010 is the largest over the period among all countries studied. However, despite our gains, the country still lags in infrastructure, which remains "poor" at 91st place. The country is ranked 108th in airport infrastructure and 101st in seaport infrastructure¹.

In view of this, this proposed measure aims to improve the BOT law by expanding its coverage and providing more incentives to the private sector who become partners of the government in infrastructure projects.

The measure introduces the "Projects of National Significance" as a classification of infrastructure projects which, when classified as such, will enjoy incentives such as exemption from real property tax, restrictions on imposable local taxes and automatic grant of business permits, among others. The bill also protects these projects from being the subject of judicial reliefs such as temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions.

In view of the foregoing, and to further sustain the high competitive ranking of our country, immediate approval of this bill is earnestly requested.


HON. FRANCISCO ASHLEY L. ACEDILLO


HON. GARY C. ALEJANO

¹ Data retrieved from <http://www.philstar.com/headlines/2014/09/03/1364967/philippines-7-notches-global-competitiveness-index> on 02/17/2015.

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AN ACT
ENCOURAGING MORE PUBLIC-PRIVATE PARTNERSHIP (PPP) PROJECTS,
CREATING THE PUBLIC-PRIVATE PARTNERSHIP (PPP) GUARANTY FUND, AND
FOR OTHER PURPOSES, THEREBY AMENDING REPUBLIC ACT NO. 6957, AS
AMENDED BY REPUBLIC ACT NO. 7718, OTHERWISE KNOWN AS THE "BUILD-
OPERATE-TRANSFER" (BOT) LAW

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

SECTION 1. Section 4-A of Republic Act (R.A.) No. 6957, as amended by Republic Act (R.A.) No. 7718, is hereby further amended to read as follows:

"SEC. 4-A. *Unsolicited proposals.* - Unsolicited proposals for projects may be [accepted by any government agency or local government unit on a negotiated basis: Provided, That, all the following conditions are met: (1) such projects involve a new concept or technology and/or are not part of the list of priority projects, (2) no direct government guarantee, subsidy or equity is required, and (3) the government agency or local government unit has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty (60) working days: Provided, further, That in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within thirty (30) working days] **SUBMITTED. THE GOVERNMENT AGENCY, GOVERNMENT-OWNED AND CONTROLLED CORPORATION (GOCC), OR LOCAL GOVERNMENT UNIT (LGU) CONCERNED MAY EITHER:**

(1) USE THE UNSOLICITED 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

1 THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY
2 (NEDA), THE ORIGINAL PROPONENT OF THE UNSOLICITED
3 PROPOSAL MAY BE REIMBURSED FOR COSTS INCURRED IN ITS

4 PREPARATION, INCLUDING, BUT NOT LIMITED TO,
5 THE COST OF ANY FEASIBILITY STUDIES UNDERTAKEN:
6 PROVIDED, THAT SUCH REIMBURSEMENT: (A) SHALL BE IN
7 THE AMOUNT TO BE DETERMINED BY NEDA, BUT NOT
8 EXCEEDING THREE PERCENT (3%) OF THE TOTAL PROJECT
9 COST, EXCLUDING ANY PROJECT COSTS WHICH WILL BE
10 BORNE BY THE GOVERNMENT SUCH AS, BUT NOT LIMITED TO,
11 THE COST OF RIGHT-OF-WAY ACQUISITIONS; AND (B) SHALL
12 BE PAID IN FULL BY THE WINNING BIDDER AS A
13 REQUIREMENT FOR THE AWARD OF THE PROJECT;

14 (2) ACCEPT THE UNSOLICITED PROPOSAL ON A
15 NEGOTIATED BASIS: *PROVIDED*, THAT, THE FOLLOWING
16 CONDITIONS ARE MET: (A) SUCH PROJECTS INVOLVE A NEW
17 CONCEPT IN TECHNOLOGY AND/OR ARE NOT PART OF THE
18 LIST OF PRIORITY PROJECTS; (B) NO DIRECT GOVERNMENT
19 GUARANTEE, SUBSIDY OR EQUITY OR ANY FORM OF
20 PAYMENT OR SECURITY FROM THE GOVERNMENT IS
21 REQUIRED AS PROVIDED IN THE IMMEDIATELY SUCCEEDING
22 SECTION; AND (3) THE GOVERNMENT AGENCY OR LGU HAS
23 INVITED BY PUBLICATION FOR THREE (3) CONSECUTIVE
24 WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION,
25 COMPARATIVE OR COMPETITIVE PROPOSALS AND NO OTHER,
26 PROPOSAL IS RECEIVED FOR A PERIOD TO BE DETERMINED
27 BY NEDA, BUT NOT TO EXCEED ONE (1) YEAR: *PROVIDED*,
28 *FURTHER*, THAT IN THE EVENT ANOTHER PROPONENT
29 SUBMITS A PROPOSAL LOWER IN PRICE, THE ORIGINAL
30 PROPONENT SHALL HAVE THE RIGHT TO MATCH THAT PRICE
31 WITHIN THIRTY (30) WORKING DAYS; OR

32 (3) REJECT THE PROPOSAL."
33

34 SEC. 2. R.A. No. 6957, as amended by R.A. No. 7718, is hereby further amended by
35 inserting a new section after Section 4-A to read as follows:
36

37 "SEC. 4-B. *PROHIBITION AGAINST GOVERNMENT GUARANTEES*
38 *OR PAYMENTS.* - NOTWITHSTANDING ANY AGREEMENT TO THE

1 CONTRARY, THE PROJECT PROPONENT OF AN UNSOLICITED
2 PROPOSAL ACCEPTED BY THE GOVERNMENT ON A NEGOTIATED
3 BASIS IN ACCORDANCE WITH SECTION 4-A (2) SHALL NOT, AT
4 ANYTIME, BE ENTITLED TO ANY FORM OF PAYMENT OR
5 SECURITY FROM THE GOVERNMENT, INCLUDING, BUT NOT
6 LIMITED TO, COST SHARING, CREDIT ENHANCEMENT, DIRECT
7 OR INDIRECT GOVERNMENT GUARANTEE, SUBSIDY OR EQUITY."

8
9 SEC. 3. R.A. No. 6957, as amended by R.A. No. 7718, is hereby further amended by
10 inserting a new section after Section 10 to read as follows:

11
12 "SEC. 10-A. *PROJECTS OF NATIONAL SIGNIFICANCE.* – UPON
13 CERTIFICATION AND RECOMMENDATION OF NEDA, THE
14 PRESIDENT MAY CLASSIFY CERTAIN PROJECTS UNDERTAKEN
15 UNDER THIS ACT AS PROJECTS OF NATIONAL SIGNIFICANCE,
16 WHICH SHALL BE ENTITLED TO THE FOLLOWING INCENTIVES:

17 A. ALL REAL PROPERTIES WHICH ARE ACTUALLY
18 AND DIRECTLY USED FOR THE PROJECT SHALL BE
19 EXEMPT FROM ANY AND ALL REAL PROPERTY TAXES
20 LEVIED UNDER REPUBLIC ACT NO. 7160;

21 B. ALL LOCAL TAXES IMPOSED BY A PROVINCE,
22 CITY OR MUNICIPALITY IN METRO MANILA PURSUANT TO
23 REPUBLIC ACT NO. 7160 ON THE PROJECT PROPONENT
24 SHALL NOT EXCEED FIFTY PERCENT (50%) OF ONE
25 PERCENT (1%) OF GROSS SALES OR RECEIPTS OF THE
26 PRECEDING CALENDAR YEAR;

27 C. THE NECESSARY BUSINESS PERMITS,
28 INCLUDING ANY RENEWALS THEREOF, SHALL BE DEEMED
29 TO HAVE BEEN AUTOMATICALLY GRANTED OR ISSUED TO
30 THE WINNING PROJECT PROPONENT UPON TENDER OF
31 THE REQUIRED TAXES AND FEES TO THE APPROPRIATE
32 LGU.

33 FOR PURPOSES OF THIS SECTION, IN ORDER FOR A
34 PROJECT TO QUALIFY AS A PROJECT OF NATIONAL
35 SIGNIFICANCE, THE FOLLOWING CONDITIONS MUST BE
36 SATISFIED:

- 1 1. THE TOTAL COST OF THE PROJECT IS AT LEAST FIVE
- 2 BILLION PESOS (PHP5,000,000,000.00); AND
- 3 2. THE PROJECT IS LOCATED IN OR WILL DIRECTLY
- 4 BENEFIT AT LEAST TWO (2) PROVINCES."
- 5

6 SEC. 4. R.A. No. 6957, as amended by R.A. No. 7718, is hereby further amended by
7 inserting a new Section 11 to read as follows:

8 "SEC. 11. *PROHIBITION ON THE ISSUANCE OF TEMPORARY*
9 *RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS AND PRELIMINARY*
10 *MANDATORY INJUNCTIONS.* - NO COURT, EXCEPT THE SUPREME COURT,
11 SHALL ISSUE ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY
12 INJUNCTION AND PRELIMINARY MANDATORY INJUNCTION AGAINST
13 THE GOVERNMENT, OR ANY OF ITS SUBDIVISIONS, OFFICIALS OR ANY
14 PERSON OR ENTITY, WHETHER PUBLIC OR PRIVATE, ACTING UNDER
15 THE GOVERNMENT'S DIRECTION, TO RESTRAIN, PROHIBIT OR COMPEL
16 THE FOLLOWING ACTS WITH REGARD TO PROJECTS OF NATIONAL
17 SIGNIFICANCE UNDER THE IMMEDIATELY PRECEDING SECTION:

- 18 A. ACQUISITION, CLEARANCE AND DEVELOPMENT OF THE
- 19 RIGHT-OF-WAY AND/OR SITE OR LOCATION;
- 20 B. BIDDING OR AWARDING;
- 21 C. COMMENCEMENT, PROSECUTION,
- 22 EXECUTION, IMPLEMENTATION AND OPERATION;
- 23 D. TERMINATION OR RESCISSION OF THE CONTRACT; AND
- 24 E. THE UNDERTAKING OR AUTHORIZATION OF ANY OTHER
- 25 LAWFUL ACTIVITY NECESSARY OR IN CONNECTION WITH
- 26 THE EXECUTION OR IMPLEMENTATION OF THE PROJECT
- 27 THIS PROHIBITION SHALL APPLY IN ALL CASES, DISPUTES OR
- 28 CONTROVERSIES INSTITUTED BY A PRIVATE PARTY,
- 29 INCLUDING, BUT NOT LIMITED TO, CASES FILED BY BIDDERS
- 30 OR THOSE CLAIMING TO HAVE RIGHTS THROUGH SUCH
- 31 BIDDERS INVOLVING PROJECTS OF NATIONAL SIGNIFICANCE.
- 32 THIS PROHIBITION SHALL NOT APPLY WHEN THE MATTER IS
- 33 OF EXTREME URGENCY INVOLVING A CONSTITUTIONAL
- 34 ISSUE, SUCH THAT UNLESS A TEMPORARY RESTRAINING
- 35 ORDER IS ISSUED, GRAVE INJUSTICE AND IRREPARABLE
- 36 INJURY WILL ARISE. THE APPLICANT SHALL FILE A BOND, IN
- 37 AN AMOUNT TO BE FIXED BY THE COURT, WHICH BOND
- 38 SHALL ACCRUE IN FAVOR OF THE GOVERNMENT IF THE

1 COURT SHOULD FINALLY DECIDE THAT THE APPLICANT WAS
2 NOT ENTITLED TO THE RELIEF SOUGHT.
3

4 ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY
5 INJUNCTION AND PRELIMINARY MANDATORY INJUNCTION
6 ISSUED IN VIOLATION OF THIS SECTION IS VOID AND OF NO
7 FORCE AND EFFECT."
8

9 SEC. 5. The succeeding sections of R.A. No. 6957, as amended by R.A. No. 7718, are
10 hereby renumbered accordingly.
11

12 SEC. 6. *Public-Private Partnership (PPP) Guaranty Fund.* - A PPP Guaranty Fund is
13 hereby created to defray the cost of compensation to project proponents which enter into BOT
14 contracts, concession agreements or other contractual agreements with any national government
15 agency or GOCC pursuant to the provisions of Republic Act No. 6957, as amended, in the event
16 that the government agency or GOCC fails to comply, or is prevented from complying, with its
17 obligations under the aforementioned contracts or agreements as a result of any act of another
18 agency or branch of government: Provided, That no compensation shall be paid out of the PPP
19 Guaranty Fund if the contract or agreement has been determined to be unlawful or
20 unconstitutional by a final judgment of a court of competent jurisdiction.
21

22 The initial funding in the amount of Five Billion Pesos (P5,000,000,000.00) for the
23 creation of the Fund shall be charged against the overall savings of the National Government.
24 Thereafter, the PPP Guaranty Fund may be replenished or increased by such amount as may be
25 deemed necessary in subsequent General Appropriations Act.
26

27 SEC. 7. *Implementing Rules and Regulations.* - The NEDA, Departments of Finance,
28 and the Department of Budget and Management shall promulgate the implementing rules and
29 regulations within sixty (60) days from the effectivity of this Act.
30

31 SEC. 8. *Separability Clause.* - If any provision of this Act is declared unconstitutional or
32 invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and
33 effect.
34

35 SEC. 9. *Repealing Clause.* - All laws, decrees, executive orders, proclamations, rules
36 and regulations and other issuances or parts thereof which are inconsistent with the provisions of
37 this Act are hereby repealed or modified accordingly.

1 **SEC. 10. *Effectivity Clause.*** - This act shall take effect after fifteen (15) days from its
2 publication in at least two (2) newspaper of general circulation.

Approved,