

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Seventeenth Congress
Regular Session

HOUSE BILL NO. 4438



Introduced by Honorable Deogracias Victor "DV" B. Savellano

Explanatory Note

This bill seeks to address gaps in existing legislation by establishing both regulatory and incentives mechanisms to manage both public and private choices toward the protection and conservation of built heritage.

Existing Legislation. At present, the protection of built heritage is largely covered by the Heritage Conservation Law (RA 10066), and to a lesser extent, the different charters of the cultural agencies, such as the National Commission for Culture and the Arts (RA 7356), the Historical Commission (RA 10086) and the National Museum (RA 8492).

Such protection also falls within the mandate of local governments in relation to their powers of land use planning, management and regulation, covered under the Local Government Code (RA 7160) and the Urban Housing and Development Act (RA 7279) and other laws on land use and zoning.

Stakeholders however note the insufficiency of both the cultural heritage and the local governance legal regimes in protecting heritage. There is a need to integrate heritage protection with existing local government mandates, and to provide financial incentives to encourage property owners to preserve their structures.

Key Issues and Proposed Solutions. This proposal seeks to address several key problems encountered in the implementation of the Heritage Conservation Law:

1. The need to integrate heritage protection with land use planning.

Demolitions of heritage structures have continued despite the law, and often have been halted only because of active civil society engagement. Local governments have:

- a) Claimed ignorance of the fact of individual structures having heritage value,
- b) Asserted their autonomy, especially with regard to land use planning and permitting functions, or
- c) Asserted that the need for development outweighs the value of preserving the structure.

This law addresses this by:

- a) Requiring that the building official verify the status of a structure as heritage before issuing a permit,
- b) Integrating heritage protection as part of land use planning, and
- c) Requiring certain economic and planning tools (such as the use of zoning, impact assessment and floor area ratios) as a means of managing urban density, and allowing heritage structures and zones to benefit economically by selling unutilized development rights, or by preventing variances to plans without proper impact analysis

2. The need to encourage private owners of property to preserve heritage.

Private owners encounter many different problems that often result in the demolition of a heritage structure. It varies from:

- a) The difficulties of settling estates, and having to work among several heirs, some of whom may be scattered around the world, and all of whom will have different ideas and levels of interest in the property,
- b) The recognition that, for many families, the real estate of a heritage structure may be the only significant asset, which may need to be sold or mortgaged as the need arises
- c) The perception that a declaration of heritage means losing control over the property and being unable to use it productively

This measure addresses these problems through the following:

- a) Providing tax incentives to preserve heritage, reducing economic pressures to sell the property
- b) Allowing for a judicially-declared trustee of a property, when co-owners to an inherited heritage structure
- c) Mandating the cultural agencies to develop a hierarchy of classification of heritage structures, so the level of protection and use can be properly defined, and the responsibilities of the state and the owner are clear

3. The need to properly define the jurisdictional borders between cultural agencies, and to develop institutional capacity. A key challenge faced between the cultural agencies is that the jurisdictional lines between them are often unclear yet overlapping, such that accountability becomes difficult.

This measure deals with this problem by granting the President to streamline and rationalize the operations and mandates of the cultural agencies, but only as regards the prompt resolution of matters concerning built heritage.


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An Act for the Stewardship and Conservation of Built Cultural Heritage

Section 1. Short Title. The Built Cultural Heritage Act of 2016.

Article I: Introduction

Section 2. Declaration of Policy. Consistent with the provisions of the Constitution under Article II, Sections 9, 17, 20 and 23, Article XII, Section 6, and Article XIV, Sections 14, 15, 16, and 17, and the existing mandates in Republic Acts No. 10066, 10086, 7356, and other relevant laws, the State declares that:

- a. It shall do its utmost in the stewardship and protection of built cultural heritage, because of the importance of such heritage in understanding and appreciating Philippine history and culture, nurturing the identity and nationalism of the Filipino, and in attaining genuine and holistic national development.
- b. It recognizes the stewardship and protection of built cultural heritage as a public good, which shall be directly or indirectly supported by its resources whenever possible.
- c. Built cultural heritage, whether publicly or privately owned, under principles of stewardship, shall be administered for the inspiration and benefit of present and future generations.
- d. It shall support the conservation and adaptive reuse of built heritage by the grant of fiscal and other incentives, in order to fully unlock the economic value of such heritage, while preserving its cultural and historical value.

Section 3. Interpretation and Implementation. The interpretation and implementation of the provisions of this Act shall:

- a. Be in a manner that most supports the stewardship and conservation of built heritage.
- b. Give due regard for the varying state of documentation of titles to land, structures thereon, and transfers thereof throughout the country, such that the lack of complete documentation shall not, by itself, bar an applicant from availing the privileges and invoking rights provided under this Act.

- c. Recognize that built heritage and the land on which it stands is often the most important asset of many families and individuals, and that this Act should allow such families and individuals to obtain an economic return on that asset.

Section 4. Definition of Terms.

- a. Built Heritage - architectural and engineering structures such as, but not limited to, bridges, government buildings, houses of ancestry, traditional dwellings, quartels, train stations, lighthouses, small ports, educational, technological and industrial complexes, and their settings, and landscapes with notable historical and cultural significance [RA 10066, s 3(f), RA 10086, s 3(a)]
- b. Classified Built Heritage - Built heritage that has been duly marked and listed in the Philippine Registry of Cultural Property [see RA 10066, s 3(gg), RA 10086, s3(b)]
- c. Housing and Land Use Regulatory Board - the planning, regulatory and quasi-judicial instrumentality of government for land use development [EO 648 (1981), EO 90 (1986)]
- d. Zoning Ordinance - legislation adopted by a local government unit that implements the comprehensive land use plan of the local government. [RA 7160, s. 20 (c).]
- e. Land Use Plan - a document prepared by the local government which forms the basis for the future use of land resources, including, but not limited to, food production, human settlements, and industrial expansion. [RA 7160, s 20 (c).]
- f. Floor Area Ratio (FAR) - the ratio of a building's total floor area to the size of the land on which it was built. (see NYC planning glossary)
- g. Variance - a discretionary action by the appropriate body in the local government unit that grants relief from the provisions of the zoning ordinance to the extent necessary to permit a reasonable or practical use of the land, when the regulations imposed by zoning in relation to the unique conditions of a parcel of land cause the property owner practical difficulty and undue hardship if it were developed according to the zoning regulations. (see NYC planning glossary)
- h. National Commission for Culture and the Arts (NCCA) - the government instrumentality responsible for formulating policies for the development of culture and arts, and implementing and coordinating the implementation of these policies with affiliated cultural agencies (see RA 7356, s 8)
- i. National Museum (NM) - the government instrumentality with the primary mission of acquiring documents, preserving, exhibiting, and fostering scholarly study and appreciation of works of art, specimens, and cultural and historical artifacts. [see RA 8492, s 3]
- j. National Historical Commission (NHC) - the government instrumentality responsible for history and with the authority to determine all factual matters relating to official Philippine history. [RA 10086, s5]
- k. National Cultural Agencies (NCA) - the National Commission for Culture and the Arts, Cultural Center of the Philippines, the Institute of Philippine Languages, the National Historical Commission, the National Library, the National Museum, the National Archives, among others. [RA 10066, s 18]

- l. The Local Government Code (LGC) - Republic Act No. 7160
- m. Urban Development and Housing Act (UDHA) - Republic Act No. 7279
- n. Covered Property - Classified property, including both the structure and the land on which the structure stands
- o. The Registry - The Philippine Registry of Cultural Property [RA 10066, s3(g)]
- p. Government Financial Institutions - refer to financial institutions or corporations in which the government directly or indirectly owns majority of the capital stock and, which are either: (1) registered with or directly supervised by the Bangko Sentral ng Pilipinas; or (2) collecting or transacting funds or contributions from the public and places them in financial instruments or assets such as deposits, loans, bonds and equity including, but not limited to, the Government Service Insurance System and the Social Security System. [RA 10149, s3(m)]
- q. Transfer Development Rights (TDR) - the transfer of unused development rights from one zoning lot to another in limited circumstances (see NYC planning glossary)

Article II. Local Government Action and Land Use Planning

Section 5. Philippine Registry of Cultural Property. All LGUs are required to integrate all properties listed by the NCAs in their respective land use plans. They may file a petition with the NCCA to include in, or exclude from, the Registry a particular property.

The NCCA and its attached agencies shall, within thirty (30) days from the effectivity of this Act, ensure that the Registry is available on-line and is updated on a regular basis.

Section 6. Construction and Demolition. It shall be the duty of every city or municipal building official to verify with the Registry whether a particular property is in the Registry prior to issuing any permit that may destroy, deface, or otherwise alter any structure, and he shall issue an affidavit stating:

- a. The date and time of verification
- b. The identity and location of the structure
- c. Whether the property in question is included in the Registry
- d. The action to be taken as regards the property
- e. Such other requirements as may be stipulated by the HLURB and the NCCA

The city or municipal register is prohibited from issuing an affidavit that in effect states that he or she or she was unable to access the Registry and/or verify the status of the property.

Section 7. Public Safety. No city or municipal building official shall allow the demolition of classified property on the grounds of public safety, such as the property being a hazard for fire, earthquake, sanitation, collapse, or other similar grounds of public safety, without first reporting the same to, and allowing for the inspection by, a duly authorized official of the NCCA. Considering the particular expertise of the NCCA as

regards the cultural value and the technical feasibility of reconstruction and support, the findings of the NCCA shall bind the building official.

Section 8. Precautionary Principle. In the absence of any specific declaration or order to the contrary regarding a specific property, it shall be the duty of the municipal or city building official to act with utmost caution in implementing or allowing any act that may expose classified or unclassified built heritage to risk or damage.

Section 9. Inclusion of Heritage in Planning. Within one (1) year from the release of regulations and guidelines by the HLURB and the NCCA as provided in Section 17, the cities and municipalities shall include a section on built heritage as an amendment to their respective land use plans and zoning ordinances. They shall also include provisions to establish, maintain and respect open space, architectural and design limitations, development and height restrictions, buffer zones, and sightlines to respect and preserve built heritage, cultural and historical sites and monuments, as well as parks and protected areas.

Section 10. Local Initiative. The residents of a city or municipality, through local initiative under the Local Government Code, establish via ordinance a heritage district, designate heritage sites, or establish buffer zones, sightlines, architectural and design limitations, or open space restrictions, and create mechanisms for the governance of such areas, and such an ordinance cannot be revoked by the local council within three years from the approval of such an ordinance.

Section 11. Evaluation of Land Use Plans and Zoning Ordinances. In evaluating applications for approval of zoning ordinances and land use plans, the HLURB and relevant LGUs must ensure that the ordinances and plans contain provisions to establish, maintain and respect open space, architectural and design limitations, development and height restrictions, buffer zones, and sightlines to respect and preserve built heritage, cultural and historical sites and monuments, as well as parks and protected areas.

Section 12. Floor Area Ratios (FAR). All municipalities and cities shall adopt zoning ordinances that strictly apply the use of FAR to manage urban density and development, especially in the urban core of their territories. The HLURB shall, within six months from the effectivity of this Act, adopt guidelines and programs to assist municipalities and cities in using floor area ratios as planning and regulatory tools to manage urban development. Municipalities and cities that do not currently use FAR must do so via ordinance within one (1) year from the adoption of rules by the HLURB.

Section 13. Transfer Development Rights (TDR). Without applying for variance, a property shall only exceed the allowable Floor Area Ratio (FAR) for a zone in a specific city or municipality by purchasing the rights to the unutilized FAR of properties within the same city or municipality. The purchase and use of these transfer development rights shall be subject to the following:

- a. The unutilized FAR shall be computed as follows:

$$\text{Maximum allowed FAR} - \text{utilized FAR} = \text{Unutilized FAR}$$

- b. The city or municipality shall require that unutilized FAR shall only be applied to properties within specific zones or subzones in order to manage the urban density and the direction of physical development of the urban area, as well as to preserve sightlines, buffer zones, landscapes, heritage structures, and open space.

- c. The purchase of unutilized FAR shall be exempt from both national and local taxation, but in lieu of taxes, of the proceeds from the sale of unutilized FAR:
1. Ten percent (10%) shall be placed in a trust fund in the name of the city or municipality, the earnings from which shall be used solely for the purpose of maintaining public spaces and infrastructure in the source areas of the unutilized FAR
 2. Forty percent (40%) shall be placed in a trust fund in the name of the beneficiary of the source property, the earnings of which shall be used solely for the preservation of the source property, regardless of whether the property is classified as heritage or not
- d. The minimum purchase price of unutilized FAR shall be computed as by:

$$\frac{\text{Market value of land}}{\text{maximum allowed FAR}} \times \text{unutilized FAR} = \text{Minimum Purchase Price}$$

- e. Metropolitan areas covering more than one municipality or city may establish a system allowing for TDR to be traded within and between the municipalities or cities composing the metropolitan area.

Section 14. Approval of Variances. Consistent with the provisions of Executive Order No. 72 (1993), Letter of Instruction No. 729 (1978), Executive Order No. 648 (1981), Republic Act No. 7160, and Republic Act No. 7279, requiring the review and ratification by provinces of municipal and component city land use plans, and by the HLURB of provincial, highly urbanized cities, and independent cities, no variances from a duly approved zoning ordinance and land use plan shall be valid without the ratification of the province, or the HLURB, as the case may be. An application for variance must be subject to the following:

- a. Include an analysis of the social, economic, cultural and environmental impact on the immediate and surrounding area of the proposed development for which the variance is sought.
- b. Any fee for the application of a variance must bear a reasonable relationship to the aforementioned impacts, and must include the cost of necessary infrastructure and public expenditures needed to mitigate such impacts and support the development. In no case shall it be less than one hundred and fifty percent (150%) of the total market value of increase in FAR above what is allowed in that specific zone.
- c. One third (1/3) of that fee shall be placed in a trust fund in the name of the city or municipality, the earnings from which shall be used solely for the purpose of maintaining public spaces and infrastructure in the area surrounding the property subjected to the variance.
- d. The mere payment of a fee and the submission of an impact analysis shall not, *ipso facto*, result in the approval of the application for variance. The province or HLURB shall have full discretion in the approval or denial of an application.

Section 15. Penalty for Building Officials. A city or municipal building official that fails to issue the affidavit or fraudulently or erroneously issues the affidavit under Section 6, allows the demolition of property without informing or securing the authorization of the NCCA under Section 7, or otherwise allows the

destruction, defacement or alteration of property without exercising due diligence and utmost caution to ascertain its status as heritage under Section 8, shall be subject to criminal, administrative, and professional disciplinary proceedings, as well as such penalties as may be provided below and in other laws.

Section 16. Penalty for Failure to Adopt a Land Use Plan and Zoning Ordinance. In view of the social, economic, environmental and cultural cost of a failure to undertake proper development planning, a local government unit that has not submitted its land use plan and zoning ordinance for approval by the relevant instrumentality, or has not updated the same in ten years, shall receive a penalty, reducing its Internal Revenue Allotment by ten percent (10%) for every year that it has failed to do so.

Section 17. Regulations and Guidelines. Within sixty (60) days from the effectivity of this law, the HLURB, the NCCA, and the DENR, shall jointly issue appropriate regulations and guidelines for LGUs for the implementation of the sections under this Article.

Article III. Incentives for Built Heritage

Section 18. Coverage. The incentives and other benefits for built heritage under this article, except as otherwise provided, shall apply solely to structures duly entered in the Registry, and the parcel of land on which the structure stands. In the event that the parcel of land is grossly disproportional to the size of the built heritage, and is not itself part of the scope of the classified property, the land exempt from taxation shall be limited to the building footprint and a reasonable buffer zone around the property to protect both its structural integrity and its historical or cultural context, as may be delimited by the NCCA.

Section 19. The Applicant. The applicant for incentives and other benefits for built heritage under this article, except as otherwise provided, may be any of the following:

- a. The owner of the covered property
- b. A person designated as the administrator of the covered property, holding relevant and applicable authorization in relation to the property
- c. A trustee for and on behalf of the owners of the covered property, as hereinafter provided
- d. A third party conducting business in the covered property, provided it is duly authorized by the owner, administrator, or trustee to apply for the benefits and incentives
- e. A third party charged with the repair, maintenance, restoration, management or reconstruction of the covered property

Section 20. The Heritage Trustee. The following shall govern the designation of a heritage trustee:

- a. In the event that the applicant is unable to establish clear and full ownership over the covered property due to the lack of full and proper documentation, such as, but not limited to:
 1. The failure to properly document the transfer of the property through estate proceedings
 2. The inability to obtain full consent from all co-owners of the property
 3. The non-registration under the Torrens System of the land on which the property is located

The applicant, in a verified application filed in the court having jurisdiction over the covered property, may establish his or her claim over the property by affidavits and collateral evidence, and

after publication and in a summary proceeding, the court may designate the applicant as a trustee in favor of all other possible rights holders to the property.

- b. The court shall further require that the applicant deposit in a trust fund a portion of the net income of the property for the benefit of such other rights holders.
- c. The Supreme Court shall issue appropriate rules of procedure to govern the designation of a heritage trustee.

Section 21. Incentives for Heritage. The applicant shall be entitled to claim the following:

- a. A covered property shall be exempt from all taxes arising from, or incidental to, transfers or changes in ownership, such as but not limited to:
 - 1. Estate taxation
 - 2. Capital gains taxation
 - 3. Documentary stamp taxes
 - 4. Value added taxes
- b. Income derived by an applicant by operating a business establishment within a covered property shall be subjected to the following:
 - 1. A gross income tax rate of five percent (5%) provided that the applicant's business operations are limited solely to one or more covered properties
 - 2. A double deduction of expenses actually incurred from the repair, maintenance, restoration, management or reconstruction of covered property, regardless of whether the applicant is a natural or juridical person, or whether only part of its business operations are located in one or more covered properties.
- c. Income derived by third parties specifically from the repair, maintenance, restoration, management or reconstruction of covered property shall be exempt from income taxation.
- d. The importation of materials specifically identified by the NCCA as essential for the repair, maintenance, restoration, management or reconstruction of covered property shall be exempt from both import duties and value-added taxation.
- e. Real property taxes shall be prorated against the utilized FAR of the property.

Section 22. Financing. The NCCA shall establish a fund within appropriate GFIs to establish loan programs at concessional rates to facilitate the preservation and stewardship of privately or publicly owned but classified built heritage.

The NCCA, working closely, and under such guidelines established, with the GFI, shall provide such necessary requirements, such as the submission of a restoration or adaptive reuse plan, business plan, collateral, payment strategy, guarantor, among others, provided that such requirements are not unduly burdensome nor unreasonable under the circumstances, in view of Sections 2 and 3 of this Act.

Section 23. Administration. The administration of the grant of incentives under this Act shall be the exclusive jurisdiction of the NCCA. The NCCA and the Department of Finance shall, within sixty (60) days from the effectivity of this Act, promulgate the necessary rules to implement the incentives provided.

Section 24. Hierarchical Classification of Heritage. The NCCA shall develop a hierarchical scheme of classification for heritage structures, defining the level of protection and use, and the responsibilities of the state and the property owner/user, to balance the level of state interest in a particular structure's heritage value as against the property owner/user's rights over the property.

Article IV: General Provisions

Section 24. Implementing Rules and Regulations. Other than as provided above, the NCCA in consultation with the relevant NCAs, shall have the power to issue rules and regulations to implement this Act.

Section 25. Presidential Authorization. The President is hereby empowered to streamline and rationalize the operations and mandates of the national cultural agencies, and to establish offices under the NCCA, to ensure the prompt resolution of matters relating to the conservation of built heritage.

Section 25. Penal Clause. A government official that fails to perform any mandatory obligation under this Act, or unreasonably withholds or gravely abuses the exercise of his or her discretion shall be subject to imprisonment of three to five years, or a fine of five hundred thousand to one million pesos.

Section 26. Separability Clause. Any portion of provision of this Act that may be declared unconstitutional shall not have the effect of nullifying the other portions or provisions.

Section 27. Effectivity Clause. 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,