

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

House Bill No. 9414



Introduced by Representative MANUEL ANTONIO F. ZUBIRI

EXPLANATORY NOTE

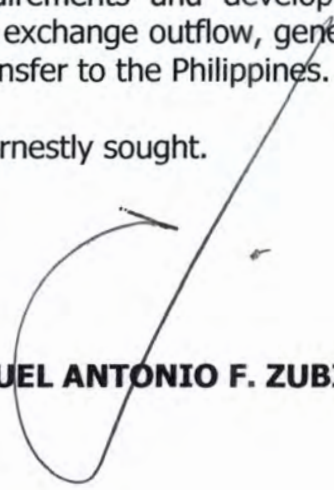
This bill aims to revitalize the SRDP Program, incentivize in-country enterprises, rationalize defense acquisition and create the Office of the Undersecretary for Defense Technology Research and Industry Development under the Department of National Defense.

The Self Reliant Defense Posture (SRDP) Program was first implemented in 1974, as the Government's response to the Muslim secessionist movement in Mindanao and support for the immediate and growing military hardware requirements of the Armed Forces of the Philippines. Through Presidential Decree No. 415, the Government, then under former President Ferdinand Marcos, aimed to develop a local defense industry that can address and provide the materiel needs of our own military forces.

Through this bill, it is hoped that the Philippines will be able to limit its dependence on allies for the provision of defense requirements and develop the defense capability of the country, as well as reduce foreign exchange outflow, generate local employment opportunities and enhance technology transfer to the Philippines.

In view of the foregoing, the passage of this bill is earnestly sought.

MANUEL ANTONIO F. ZUBIRI

A large, stylized handwritten signature in black ink, written over the printed name of Manuel Antonio F. Zubiri. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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Introduced by Representative MANUEL ANTONIO F. ZUBIRI

AN ACT PROVIDING FOR THE DEVELOPMENT OF A NATIONAL DEFENSE INDUSTRY THROUGH THE STRENGTHENING AND REVITALIZING OF THE SELF RELIANT DEFENSE POSTURE (SRDP) PROGRAM, INCENTIVIZING IN-COUNTRY ENTERPRISES, RATIONALIZING DEFENSE ACQUISITION, AND CREATING THE OFFICE OF THE UNDERSECRETARY FOR DEFENSE TECHNOLOGY RESEARCH AND INDUSTRY DEVELOPMENT UNDER THE DEPARTMENT OF NATIONAL DEFENSE, AND PROVIDING FUNDS THEREFOR

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

SECTION 1. *Short Title.* – This Act shall be known as the “Philippine Defense Industry Development Act of 2021” or the “PDIDA” for brevity.

SEC. 2. *Declaration of State Policy.* – The State declares the development of the National Defense Industry as an indispensable element of national defense. Towards this end, the State shall recognize the following:

1. The vital role of the Industry in nation-building and that with respect to government acquisition and incentives, the Industry is a class on its own that must be prioritized;
2. The necessity of an independent and self-reliant sovereign state, capable of providing its own resources for defense, security and national survival as a matter of national strategy, specifically during war and other national emergencies;
3. The consistency of the Filipino First Policy in developing national defense;

4. The indispensability of the active participation of and collaborative partnerships with the private sector in the strengthening of national defense of the country; and

5. The capability of the Philippines in ensuring the adequate supply of affordable, globally-competitive, quality and accessible defense implements, equipment, machinery, systems and solutions, and in giving priority to stimulating and maintaining defense technology research, science and technology education, training and services, and defense industry development.

For this purpose, the Government shall strengthen and revitalize the Self Reliant Defense Posture (SRDP) Program, incentivize private sector participation in the Industry, rationalize defense acquisition, and create the Office of the Undersecretary for Defense Technology Research and Industry Development which are all intended to foster the progressive growth of the Industry and hasten defense self-sufficiency of the country.

Further, the State recognizes the important role of science and technology, academic research and development institutions, and technology transfer for developing effective defense capabilities to respond and accomplish defense missions and to drive genuine modernization.

SEC. 3. *Definition of Terms.* – For purposes of this Act, the terms below shall be construed to mean, except when explicitly indicated or where the context clearly indicates otherwise, as follows:

a. Acquisition shall refer to the bureaucratic management and procurement process dealing with the investment of the country in technologies, programs and product support necessary to support national defense and security and support its armed forces. It shall include the acquisition of raw material, critical components and materiel.

b. AFP shall refer to the Armed Forces of the Philippines.

c. Board shall refer to the Board of Investments.

d. Countertrade shall refer to international trade by exchange of goods rather than by currency purchase.

e. Critical Components shall refer to components, subsystems, systems, and related special tooling and test equipment essential to the production, repair, maintenance, or operation of weapon systems or other items of equipment identified as being essential to the execution of any National Defense and National Security strategy.

f. Department shall refer to the Department of National Defense.

g. DOF shall refer to the Department of Finance.

h. GPPB shall refer to the Government Procurement Policy Board.

i. Government to Government Transactions shall refer to contractual arrangements between the Philippines and other sovereign nations for the acquisition of materiel and other defense-related acquisitions.

j. Highest Rated Bid shall refer to the offer with the highest calculated rating based on the criteria/parameters not limited to capability, quality, timeliness of delivery, life cycle cost, after-sales support, transfer of technology, warranty, perquisites and price.

k. In-country Enterprises shall refer to (1) Filipino-owned enterprises engaged in the manufacturing, servicing and operation of materiel in the Philippines, or (2) foreign-owned enterprises engaged in the manufacturing, servicing and operation of materiel provided however that such foreign-owned enterprises shall locate a substantial portion of their production within the Philippines.

l. Industry shall refer to the National Defense Industry.

m. Integrated Logistics Support refers to an integrated and iterative process for developing materiel and a support strategy that optimizes functional support, leverages existing resources, and guides the system engineering process to quantify and lower life cycle cost and decrease the logistics footprint, making the system easier to support.

n. Manufacturing refers to the process of converting raw materials, components, or parts into finished materiel, whether using manpower, machines or a combination thereof.

o. Materiel shall refer to military technology, materials and equipment, including but not limited to arms and ammunition and combat clothing.

p. Minimum Local Content refers to the minimum percentage of intermediate goods used in the manufacturing processes to be sourced from in-country enterprises.

q. National Defense refers to the policies, measures and initiatives intended to provide the necessary protection of the State against external and internal threats.

r. National Security refers to the policies, measures and initiatives intended to protect the interests of the country and to protect the State from all forms of crises.

s. NEDA shall refer to the National Economic and Development Authority.

t. Operating refers to the process of functioning or operating of materiel or facilities, utilities and appurtenances thereto which are necessary for the manufacture, servicing or operating of materiel or components.

u. Plan shall refer to the Investment Priorities Plan as provided in the Omnibus Investment Code.

v. President shall refer to the President of the Republic of the Philippines.

w. Private Sector refers to the part of the country's economic system that is not under direct government control.

x. Program shall refer to the SRDP.

y. Raw Materials refer to the basic material from which materiel is manufactured.

z. Secretary shall refer to the Secretary of National Defense.

aa. Servicing refers to the process of maintaining, repairing or overhauling materiel.

bb. SLCC shall refer to the Single Largest Completed Contract requirement as provided in the implementing rules and regulations of Republic Act No. 9184.

cc. SRDP shall refer to the Self Reliant Defense Posture as provided under pertinent laws.

SEC. 4. *The National Defense Industry.* – For the interest of the nation, the National Defense Industry shall be developed in accordance with the following:

- a. The dependence of the country on foreign support for defense requirements shall be limited in accordance with this Act and/or the policies approved by the President;
- b. To develop the defense capability of the country, the State shall rely primarily on and give preference to developing In-Country Enterprises, allocating substantial resources and manpower to defense research, utilizing to the fullest the country's natural resources as the source of the country's defense needs, and providing relevant technical and financial assistance to the private sector;

- c. To develop the defense capability of the country, the State shall rely on materiel produced, manufactured or otherwise created locally;
- d. To develop the defense capability, the State shall only use materiel from foreign sources when such materiel cannot be locally produced, manufactured or otherwise created: *Provided*, That importation from such foreign sources shall be for the ultimate objective of acquiring technology for the production of such unavailable materiel;
- e. In order to reduce foreign exchange outflow, generate local employment opportunities and enhance technology transfer to the Philippines, the Secretary shall, as far as practicable, incorporate in each agreement involving the Government and the manufacturing, servicing or operation of materiel special foreign exchange reduction schemes and countertrade, in-country manufacture co-production, or other innovative arrangements or combinations thereof; and
- f. The Program shall be developed in accordance with the provisions of this Act.

SEC. 5. Incentives. – (A) Any provision of law to the contrary notwithstanding, foreign and local enterprises engaged or proposing to engage in the manufacture, servicing and/or operation of materiel for the Government may be registered and may avail of the incentives under and subject to the conditions in Executive Order No. 226 otherwise known as the Omnibus Investments Code: *Provided*, That, notwithstanding Article 27 thereof, manufacturing, servicing and/or operation of materiel shall be included in the Investment Priorities Plan every year by operation of law after the effectivity of this Act until otherwise removed by the Board or the President: *Provided, further*, That the removal of the manufacturing, servicing and/or operation of materiel from the Plan subsequent to the effectivity of this Act shall not be interpreted as a bar or restriction on the Board from later including the manufacturing, servicing and/or operation of materiel in the Plan.

In the interest of National Security, the Board shall adopt a special procedure in the processing of applications for registration by enterprises in the Industry and offering goods or services to the government under the Program.

(B) Government financial institutions are highly encouraged to support the Industry by formulating and extending financial products that would benefit its hastened development.

(C) In addition to the incentives provided in E.O. 226, foreign and local enterprises engaged in the manufacture, servicing and/or operation of materiel registered with the Board shall enjoy exemption from customs duties and national internal revenue taxes payable on the importation of raw materials and critical components by registered enterprises for the purpose of producing materiel.

SEC. 6. Rationalization of Defense Acquisition. – (A) Any provision of law to the contrary notwithstanding, the Secretary, in behalf of the Government, is hereby authorized to enter into contracts, under such terms and conditions as may be agreed upon, with any natural or juridical person, with or without public bidding, for the manufacture, servicing or operation of materiel or components thereof, facilities, utilities and appurtenances thereto which are necessary for the manufacture, servicing or operating of such materiel or components thereof necessary for national defense: *Provided*, That in the exercise of such authority, the Secretary shall comply with the reportorial requirements under Section 13 of this Act.

(B) Any provision of law to the contrary notwithstanding, contracts for the manufacture, servicing or operation of materiel or components thereof, facilities, utilities and appurtenances thereto which are necessary for the manufacture, servicing or operating of such materiel or components thereof necessary for national defense which are determined by the Secretary as not requiring public bidding shall only be awarded to in-country enterprises: *Provided*, That such materiel or components thereof, facilities, utilities and appurtenances thereto can be locally produced, manufactured or otherwise created.

(C) In the event that public bidding is required by the Secretary, and the manufacture, servicing or operation of materiel or components thereof, facilities, utilities and appurtenances thereto which are necessary for the manufacture, servicing or operating of such materiel or components thereof necessary for national defense cannot be locally produced, manufactured or otherwise created, and whenever several bidders shall participate in the public bidding, in the evaluation of the criteria on price, when comparing foreign enterprises with in-country enterprises:

1. In the event a public bidding utilizes the standard of lowest and calculated and responsive bid, bids of in-country enterprises shall be considered as having a price less

than that proposed by foreign enterprises as long as such bids shall not be more than fifteen percent (15%) in excess of the bid of such foreign enterprise; and

2. In the event a public bidding utilizes the standard of highest rated bid, bids of in-country enterprises shall be considered as having won the criteria of price as long as its bid shall not be more than fifteen percent (15%) in excess of the bid of such foreign enterprise.

(D) In the event that public bidding is required by the Secretary, and the manufacture, servicing or operation of materiel or components thereof, facilities, utilities and appurtenances thereto which are necessary for the manufacture, servicing or operating of such materiel or components thereof necessary for national defense cannot be locally produced, manufactured or otherwise created, and only foreign enterprises participate, the ultimate objective of the Department will be technology transfer and the acquiring of knowledge for eventual local production.

(E) Nothing in this Act will prohibit or restrict lawful government to government transactions for the manufacture, servicing or operation of materiel or components thereof, facilities, utilities and appurtenances thereto which are necessary for the manufacture, servicing or operating of such materiel or components thereof necessary for national defense.

(F) In Section 5(C), 5(D) and 5(E), the Department in consultation with representatives of in-country enterprises will issue reasonable regulations on the minimum local content for all defense-related acquisitions. The Department may consult with other government agencies to determine such minimum local content.

Further, in order to support the economic and employment generation thrusts of the country, all defense acquisitions requiring the engagement and/or hiring of civilian labor shall mandatorily require that all labor needs be sourced from local sources and shall, as far as practicable, be Filipino.

(G) In Section 5(C), 5(D) and 5(E), Integrated Logistics Support must be incorporated in all contracts concerning defense-related acquisitions.

SEC. 7. *Multi-Year Contracts and Other Contractual Arrangements.* – For the purpose of acquisition of materiel, notwithstanding existing laws to the contrary, and subject to Section 13 of this Act, the Department and its bureaus shall be authorized to enter into multi-year contracts and other multi-year contractual arrangements: *Provided*, That Congress shall, upon issuance of a multi-year obligation authority by the DBM, make the corresponding appropriation for the ensuing fiscal years: *Provided, further*, That the Department, in consultation with DBM shall issue implementing guidelines to ensure consistency with the Revised AFP Modernization Program and this Act: *Provided, further*, That understanding that the absence of multi-year contracts is a primary reason for the poor development of the Industry, the DBM shall cooperate with the Department in expediting the issuance of multi-year obligation authorities as necessary: *Provided, finally*, That the Department and its bureaus are directed to coordinate and to conduct acquisition planning for the purpose of implementing multi-year contractual arrangements and other multi-year obligations.

SEC. 8. *Performance Undertakings.* – The DOF is authorized to recognize the obligations of the Department and its bureaus with regard to the acquisition of materiel as obligations of the Republic of the Philippines and to undertake to pay the same in the event of non-payment by the Department and its bureaus.

SEC. 9. *Countertrade.* – Countertrade for defense-related acquisition shall be significant, meaningful and must be of benefit to the Industry.

SEC. 10. *Exemption from SLCC.* – In-country enterprises participating in the acquisition of materiel by the Department and its bureaus shall be exempt from the SLCC requirement upon effectivity of this Act.

SEC. 11. *Acquisition System.* – Subject to the provisions of this Act, the system and procedures for acquisition of materiel, with or without public bidding, shall be in accordance with a special law on defense-related procurement: *Provided*, That Republic Act No. 9184 or any subsequent general law on procurement shall apply suppletorily: *Provided, further*, That the Department and its bureaus, in consultation with the DBM and the GPPB, shall strengthen their systems and procedures for acquisition of materiel under this Act.

SEC. 12. *Creation of the Office of the Undersecretary for Defense Technology Research and Industry Development.* – There is created in the Department an Office of the

Undersecretary for Defense Technology Research and Industry Development directly under the Secretary. The Office shall be headed by an officer with the rank of Undersecretary, assisted by an Assistant Secretary and supported by at least three (3) directors with the equivalent rank of Director IV. The Office will be charged with the responsibility of managing and administering a databank for analysis, conducting research and development and technology transfer, facilitating defense industry promotion, establishing public-private partnerships, and setting up domestic and foreign collaborations, and advising the Secretary on all matters pertaining to the development of the National Defense Industry in accordance with this Act; and recommending policies, rules and regulations to the Secretary for the development of the National Defense Industry and the implementation of this Act. The Undersecretary, Assistant Secretary and Directors shall be appointed by the President of the Philippines.

SEC. 13. *Reporting and Oversight.* – The Secretary shall, not later than the end of the first quarter of the succeeding year, submit to the President and Congress:

1. An annual report on the acquisitions made under this Act; and,
2. Copies of the multi-year contracts and other agreements entered into by the Department and its bureaus.

Pursuant to its constitutional duties, the Executive Department, particularly the NEDA, the Commission on Audit, and the Congress shall discharge oversight functions, to wit:

- a. The NEDA shall conduct annual review of the status of all defense-related acquisitions via the authority exercised by the Secretary in Section 6 of this Act, identify causes of delays, reasons for bottlenecks, cost overruns, both actual and prospective, and continued viability, and report to Congress not later than June 30 of each year;
- b. The Commission on Audit shall conduct an audit on each ongoing, and completed acquisition and report to Congress not later than June 30 of each year; and,
- c. There shall be a Congressional Oversight Committee composed of the Chairmen of the Committee on National Defense and Security of both the Senate and House of Representatives who shall serve as Co-Chairmen of the Oversight Committee and four (4) members each from

the Senate and the House representing the majority and two (2) members each from the Senate and the House representing the minority to be designated by the leaders of the majority and minority in the respective chambers.

SEC. 14. *Promotion and Marketing Support.* – The Government shall promote the export of locally-made materiel and the in-country enterprises to other countries, and is encouraged to provide financial marketing support for the purpose of such promotion.

SEC. 15. *Cooperation of Government Agencies.* – The DBM, DOF, Board, GPPB and other government agencies are enjoined to support the implementation of this Act.

SEC. 16. *Appropriation.* – An initial funding of One Billion Pesos (P1,000,000,000.00) shall be appropriated to the Department for the purpose of implementing this Act. Subsequent funding shall be included in the annual General Appropriations Act.

SEC. 17. *Repealing Clause.* – Sections 1 and 2 of Presidential Decree No. 415, as amended by Presidential Decree No. 1081 is hereby repealed.

The following laws, orders and regulations are hereby modified or supplemented, as the case may be, in accordance with this Act:

1. An exception is hereby made to Government Procurement Policy Board Resolution No. 06-2003 in relation to its amendment to Section 1 of Presidential Decree No. 415;
2. An exception is hereby made to Republic Act No. 10667 otherwise known as the Philippine Competition Law in relation to its repeal of Section 4 of Commonwealth Act No. 138;
3. An exception is hereby made to Republic Act No. 9184 otherwise known as the Government Procurement Reform Act insofar as it covers procurement of materiel;
4. An exception is hereby made to Republic Act No. 1884 insofar as the exercise of the responsibility of the Office of the Undersecretary of Defense for Munitions in research and development; and

5. Section 5 of Republic Act No. 10349 insofar as it amends Section 9 of Republic Act No. 7898 is hereby supplemented.

Apart from the foregoing, all provisions of existing laws, orders, and regulations contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 18. *Separability Clause.* – If any provision of this Act shall be held unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force and effect.

SEC. 19. *Role of the GPPB.* – The GPPB shall continue to fulfill its functions as provided in Republic Act No. 9184 subject however to the provisions of this Act: *Provided,* That in no case shall the GPPB interpret Republic Act No. 9184 or any subsequent general law on procurement as overriding any of the provisions of this Act. The Secretary shall continue to serve as a member of the GPPB.

SEC. 20. *Rule of Interpretation.* – Rights and obligations existing on the date of effectivity of this Act and arising out of contracts shall be governed by the original terms and conditions of said contracts or the law in force at the time such rights were vested.

SEC. 21. *Implementing Rules and Regulations; Supplementary Regulations.* – Subject to the provisions of this Act, the President thru the Secretary is authorized to implement this Act, formulate and amend, whenever necessary, the implementing rules and regulations and standard forms necessary for the implementation of this Act, and issue supplemental regulations to hasten and facilitate the implementation of this Act.

SEC. 22. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days from its publication in the Official Gazette or at least two (2) newspapers of national circulation.

Approved,