

FIFTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

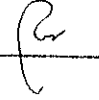


Senate
Office of the Secretary

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SENATE

S. B. No. 2710

RECEIVED BY: 

Introduced by Senator Ralph G. Recto

EXPLANATORY NOTE

During the State of the Nation Address of President Benigno Aquino III, he emphasized the importance of encouraging public-private partnerships (PPPs) as a means to develop the country's infrastructure in all sectors.

With very little fiscal space in this year's national budget to even make a dent in the country's infrastructure backlog, President Aquino has declared that strengthening laws that provide incentives to PPPs will be a priority legislative policy during his administration.

It is therefore of prime importance to revisit Republic Act No. 6957, as amended by Republic Act No. 7718, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes" or what is otherwise called the "Build-Operate-Transfer" (BOT) law.

This bill is aimed at further improving the BOT law by expanding its coverage and providing more incentives to the private sector who become partners of the government in infrastructure projects.

One salient feature of this bill is the classification of infrastructure projects as "Projects of National Significance" 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.

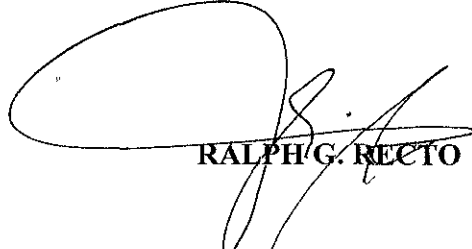
This bill also protects these projects from being the subject of judicial reliefs such as temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions.

Another feature of the measure is the creation of a so-called "Public-Private Partnership Guaranty Fund" that is aimed at defraying the cost of compensation to project proponents in the event that the government agency or government-owned-and-controlled corporation (GOCC) concerned fails to comply or is prevented from complying with its obligations.

The bill also states that unsolicited project proposals may be submitted but the government agency or GOCC can do the following: use the unsolicited proposal as the basis for public bidding; accept the unsolicited proposal on a negotiated basis; or reject the proposal.

All of these features work to strengthen the BOT law and encourage more PPPs in national and local infrastructure projects.

With these in mind, the passage of this bill is earnestly sought.

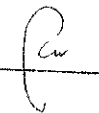

RALPH G. RECTO



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SENATE

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AN ACT
AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 6957, AS AMENDED BY
REPUBLIC ACT NO. 7718, ENTITLED "AN ACT AUTHORIZING THE FINANCING,
CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE
PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES,"
APPROPRIATING FUNDS FOR THE SAID PURPOSE, AND FOR OTHER PURPOSES

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

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

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

15 (1) USE THE UNSOLICITED PROPOSAL AS THE BASIS FOR
16 PUBLIC BIDDING AS PROVIDED IN SECTION 5 OF THIS ACT. IF A
17 FINAL AWARD TO A WINNING BIDDER IS MADE ON THE BASIS OF
18 THE UNSOLICITED PROPOSAL WITHIN ONE (1) YEAR FROM THE
19 SUBMISSION THEREOF, AS DETERMINED BY NEDA, THE ORIGINAL
20 PROPONENT OF THE UNSOLICITED PROPOSAL MAY BE REIMBURSED
21 FOR COSTS INCURRED IN ITS PREPARATION, INCLUDING, BUT NOT

1 LIMITED TO, THE COST OF ANY FEASIBILITY STUDIES
2 UNDERTAKEN, PROVIDED SUCH REIMBURSEMENT: (1) SHALL BE IN
3 THE AMOUNT TO BE DETERMINED BY NEDA, BUT NOT EXCEEDING
4 THREE PERCENT (3%) OF THE TOTAL PROJECT COST, EXCLUDING
5 ANY PROJECT COSTS WHICH WILL BE BORNE BY THE
6 GOVERNMENT SUCH AS, BUT NOT LIMITED TO, THE COST OF RIGHT-
7 OF-WAY ACQUISITIONS; AND (2) SHALL BE PAID IN FULL BY THE
8 WINNING BIDDER AS A REQUIREMENT FOR THE AWARD OF THE
9 PROJECT;

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

27 (3) REJECT THE PROPOSAL.”

28 SEC. 2. RA 6957, as amended by RA 7718, is hereby amended by inserting a new section
29 after Section 4-A to read as follows:

30 “SEC. 4-B. *PROHIBITION AGAINST GOVERNMENT GUARANTEES OR*
31 *PAYMENTS.* – NOTWITHSTANDING ANY AGREEMENT TO THE
32 CONTRARY, THE PROJECT PROPONENT OF AN UNSOLICITED
33 PROPOSAL ACCEPTED BY THE GOVERNMENT ON A NEGOTIATED
34 BASIS IN ACCORDANCE WITH SECTION 4-A (2) ABOVE SHALL NOT,
35 AT ANYTIME, BE ENTITLED TO ANY FORM OF PAYMENT OR
36 SECURITY FROM THE GOVERNMENT, INCLUDING, BUT NOT LIMITED
37 TO, COST SHARING, CREDIT ENHANCEMENT, DIRECT OR INDIRECT
38 GOVERNMENT GUARANTEE, SUBSIDY OR EQUITY.”

1 **SEC. 3.** RA 6957, as amended by RA 7718, is hereby amended by inserting a new section
2 after Section 10 to read as follows:

3 **“SEC. 10-A. PROJECTS OF NATIONAL SIGNIFICANCE. - UPON**
4 **CERTIFICATION AND RECOMMENDATION OF NEDA, THE**
5 **PRESIDENT MAY CLASSIFY CERTAIN PROJECT UNDERTAKEN**
6 **UNDER THIS ACT AS PROJECTS OF NATIONAL SIGNIFICANCE,**
7 **WHICH SHALL BE ENTITLED TO THE FOLLOWING INCENTIVES:**

8 **A. ALL REAL PROPERTIES WHICH ARE ACTUALLY AND DIRECTLY**
9 **USED FOR THE PROJECT SHALL BE EXEMPT FROM ANY AND**
10 **ALL REAL PROPERTY TAXES LEVIED UNDER REPUBLIC ACT**
11 **NO. 7160;**

12 **B. THE TOTAL OF ALL LOCAL TAXES IMPOSED BY A PROVINCE,**
13 **CITY OR MUNICIPALITY IN METRO MANILA PURSUANT TO**
14 **REPUBLIC ACT NO. 7160 ON THE PROJECT PROPONENT SHALL**
15 **NOT EXCEED FIFTY PERCENT (50%) OF ONE PERCENT (1%) OF**
16 **GROSS SALES OR RECEIPTS OF THE PRECEDING CALENDAR**
17 **YEAR;**

18 **C. THE NECESSARY BUSINESS PERMITS, INCLUDING ANY**
19 **RENEWALS THEREOF, SHALL BE DEEMED TO HAVE BEEN**
20 **AUTOMATICALLY GRANTED OR ISSUED TO THE WINNING**
21 **PROJECT PROPONENT UPON TENDER OF THE REQUIRED**
22 **TAXES AND FEES TO THE APPROPRIATE LGU.**

23 **FOR PURPOSES OF THIS SECTION, IN ORDER FOR A PROJECT TO**
24 **QUALIFY AS A PROJECT OF NATIONAL SIGNIFICANCE, THE**
25 **FOLLOWING CONDITIONS MUST OCCUR:**

26 **1. THE TOTAL COST OF THE PROJECT IS AT LEAST FIVE**
27 **BILLION PESOS (PHP5,000,000,000.00); AND**

28 **2. THE PROJECT IS LOCATED IN OR AFFECTS AT LEAST TWO (2)**
29 **PROVINCES.”**

30 **SEC. 4.** RA 6957, as amended by RA 7718, is hereby amended by inserting a new Section
31 11 to read as follows:

32 **“SEC. 11. PROHIBITION ON THE ISSUANCE OF TEMPORARY**
33 **RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS AND**
34 **PRELIMINARY MANDATORY INJUNCTIONS. – NO COURT, EXCEPT**
35 **THE SUPREME COURT, SHALL ISSUE ANY TEMPORARY**
36 **RESTRAINING ORDER, PRELIMINARY INJUNCTION AND**
37 **PRELIMINARY MANDATORY INJUNCTION AGAINST THE**
38 **GOVERNMENT, OR ANY OF ITS SUBDIVISIONS, OFFICIALS OR ANY**

1 PERSON OR ENTITY, WHETHER PUBLIC OR PRIVATE, ACTING
2 UNDER THE GOVERNMENT'S DIRECTION, TO RESTRAIN, PROHIBIT
3 OR COMPEL THE FOLLOWING ACTS WITH REGARD TO PROJECTS
4 OF NATIONAL SIGNIFICANCE UNDER THE IMMEDIATELY
5 PRECEDING SECTION:

6 A. ACQUISITION, CLEARANCE AND DEVELOPMENT OF THE RIGHT-
7 OF-WAY AND/OR SITE OR LOCATION;

8 B. BIDDING OR AWARDED;

9 C. COMMENCEMENT, PROSECUTION, EXECUTION,
10 IMPLEMENTATION AND OPERATION;

11 D. TERMINATION OR RESCISSION OF THE CONTRACT; AND

12 E. THE UNDERTAKING OR AUTHORIZATION OF ANY OTHER
13 LAWFUL ACTIVITY NECESSARY OR IN CONNECTION WITH THE
14 EXECUTION OR IMPLEMENTATION OF THE PROJECT.

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

28 ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY
29 INJUNCTION AND PRELIMINARY MANDATORY INJUNCTION ISSUED
30 IN VIOLATION OF THIS SECTION IS VOID AND OF NO FORCE AND
31 EFFECT.”

32 SEC. 5. The succeeding sections of RA 6957, as amended by RA 7718, are hereby
33 renumbered accordingly.

34 SEC. 6. *Public-Private Partnership (PPP) Guaranty Fund.* – A PPP Guaranty Fund is
35 hereby created to defray the cost of compensation to project proponents which enter into BOT
36 contracts, concession agreements or other contractual agreements with any national government
37 agency or GOCC pursuant to the provisions of Republic Act No. 6957, as amended, in the event
38 that the government agency or GOCC fails to comply, or is prevented from complying, with its

1 obligations under the aforementioned contracts or agreements as a result of any act of another
2 agency or branch of government: *Provided*, That no compensation shall be paid out of the PPP
3 Guaranty Fund if the contract or agreement has been determined to be unlawful or
4 unconstitutional by a final judgment of a court of competent jurisdiction.

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

9 **SEC. 7. *Separability Clause.*** - If any part or provision of this Act shall be held to be
10 unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall
11 continue to be in full force and effect.

12 **SEC. 8. *Repealing Clause.*** - All laws, decrees, executive orders, rules and regulations and
13 other issuances or parts thereof which are inconsistent with this Act are hereby repealed or
14 modified accordingly.

15 **SEC. 9. *Effectivity.*** - This Act shall take effect fifteen (15) days after its publication in any
16 two (2) newspapers of general circulation.

Approved,