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S E N A T E

S. No. 419

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

It is the government's moral duty to provide its population what is necessary to enable it to live a useful and productive life. Physical infrastructure is therefore vital, as it directly affects people's everyday living. Infrastructure development, maintenance and improvement are historically considered to be one of the State's most fundamental responsibilities, since it is concerned with the upkeep and enhancement of the country's over-all land-area.

However, the large financial requirements place a demanding pressure on the already-deficient national budget. The de-prioritization has resulted to a deteriorating infrastructure base, making the average Filipino contend with even more difficult circumstances. Roads, mass transportation and modern means of communication—necessary to sustain and develop the citizenry—have been regarded as significantly less important, relative to more pressing "immediate" concerns.

The Build-Operate-Transfer (BOT) scheme was established in cognizance of the fact that there is an absence of support from the government for infrastructure undertakings. It was envisioned that the BOT would result to a well-conceptualized and coordinated infrastructure program that would correlate with the national development agenda. The private sector could be tapped to plug the inadequacy, recognizing its role as the government's partner in nation-building. However, the contribution has so far been minimal, especially in the road construction portion. The required capital and financial outlay is believed to be prohibitive, and since projects of this nature usually realize returns over the long-term, private sector participation has expectedly been limited. This set-up has resulted in arbitrary participation and has hence made the general infrastructure situation uncoordinated, lacking, and at times, even redundant.

But despite the seeming obstacle of procuring loans for funding, project proponents usually still end-up with considerable profits. It should be posed then, that if the private sector has found infrastructure projects to be viable-- notwithstanding its profit-driven paradigm and the incurred borrowing and financing costs-- what more the government whose sole responsibility is to look after the general welfare of its people? It is clear that the government is the only sovereign body that has the resources, capability and expertise to plan and

coordinate infrastructure programs, consistent with its responsibility enshrined in the Constitution. Moreover, given the same amount of financing, it could construct more and better road networks and highways.

This Bill seeks to establish a corporate body which shall be called the "Road Development Authority," (hereinafter referred to as "Authority") which will be under the Office of the President. The Authority shall have the responsibility to ensure the easy mobility of people and goods all over the country, by being the central agency that will handle, coordinate and assure the building of roads, highways, bridges and other necessary physical infrastructure, complementary to the national development efforts. It shall be allowed to secure loans and grants toward this end, and shall be in-charge of initiating projects that do not get subscribed by the private sector. Due to the nature of its mandate, it shall work closely with the Department of Public Works and Highways and the Department of Transportation and Communications.

Due to the foregoing, early passage of this Bill is earnestly sought.



SERGIO OSMEÑA III
Senator

1 **SECTION 4. Powers and Functions of the Authority. --**

2 a.) The corporate powers of the Authority shall be as follows:

- 3 (i) To success in its corporate name;
- 4 (ii) To sue and be sued in such corporate name;
- 5 (iii) To adopt, alter and use a corporate seal which shall be
6 judicially noticed;
- 7 (iv) To create or alter its own organization, and staff such an
8 organization with appropriate and qualified personnel in
9 accordance with what may be deemed proper and
10 necessary to achieve the objectives of the Authority;
- 11 (v) To make or enter into contracts of any kind or nature to
12 enable it to discharge its functions under this Act;
- 13 (vi) To acquire, purchase, own, lease, mortgage, sell or
14 otherwise dispose of any land or property of any kind,
15 whether movable or immovable;
- 16 (vii) To exercise the right of eminent domain, by expropriating
17 the land or areas along proposed highways or public
18 thoroughfares;
- 19 (viii) To construct, operate and maintain toll facilities in major
20 roads, highways and public thoroughfares vested in or
21 belonging to the Authority;
- 22 (ix) To collect, subject to the determination and approval of the
23 Toll Regulatory Board, just and reasonable tolls, fees,
24 rentals or charges for the use of the toll facility;
- 25 (x) To reclaim, excavate, enclose or raise any part of the lands
26 vested in the Authority;
- 27 (xi) To raise and/or borrow, within the limitation provided by law,
28 the necessary funds from local and international financial

1 institutions and to issue bonds, promissory notes and other
2 securities for that purpose and to secure the same by
3 guarantee, pledge, mortgage, deed of trust, or assignment
4 of its properties held by the Authority for the purpose of
5 financing its projects and programs within the framework and
6 limitations of this Act;

7 (xii) To do all such other things and to transact all such business
8 directly or indirectly necessary, incidental or conducive to the
9 attainment of the purposes of the Authority;

10 (xiii) To exercise all the powers of a corporation under the
11 Corporation Law insofar as they are not inconsistent with the
12 provisions of this Act;

13 b.) The corporate functions of the Authority shall be as follows:

14 (i) To formulate, in coordination with the National Economic
15 Development Authority and the Department of Public Works
16 and Highways, a comprehensive and practicable and major
17 highways and public thoroughfares development plan for the
18 State and to program its implementation;

19 (ii) To construct, maintain, operate and provide such facilities
20 and services as are necessary in the major highways and
21 public thoroughfares vested in, or belonging to the Authority;

22 (iii) To coordinate with the Bureau of Lands or any other
23 government agency or corporation in the development of
24 any foreshore area;

25 (iv) To exercise such powers as may be essential, necessary or
26 incidental to the powers granted to it in the preceding sub-
27 paragraph as well as to carry out the policies and objectives
28 in this Act.

1 **SECTION 5. Board of Directors. --**

2 a.) The corporate powers of the Authority shall be vested in and
3 exercised by a Board of Directors, hereinafter referred to as the
4 Board, which shall consist of the following:

5 (i) The Chairman of the Board and Administrator of the Authority
6 who shall be appointed by the President of the Philippines to
7 serve for a term of six (6) years, unless sooner removed for
8 cause. In case of removal for cause, the replacement shall
9 serve only the unexpired portion of the term;

10 (ii) The Secretary of the Public Works and Highways;

11 (iii) The Director-General of the National Economic and
12 Development Authority;

13 (iv) The Secretary of Transportation and Communications;

14 (v) The Secretary of Finance;

15 (vi) Two (2) other persons who shall be appointed by the
16 President of the Philippines, representing the private sector,
17 who by reason of their knowledge or experience are, in the
18 opinion of the President, fit and proper persons to be directors
19 of the Board. They shall hold office for a period of three (3)
20 years from the date of their appointment and shall be eligible
21 for reappointment upon the completion of such period;

22 b.) The Directors listed under sub-sections a.) (ii) to (v) shall be ex-
23 officio members of the Board of Directors: Provided, That in their
24 absence the Directors concerned shall delegate the officer next in
25 rank to them in their department or office to act on their behalf as
26 Director;

27 c.) The members of the Board or their respective alternates shall
28 receive a per diem of not more than Five thousand Pesos

1 (P5,000.00) for every Board meeting actually attended by them:
2 *Provided, however,* That the per diem collected per month shall not
3 exceed the equivalent of four (4) meetings: *Provided, further,* That
4 the amount of per diem shall not be increased within two (2) years
5 after its last increase: *Provided, finally,* That the ex-officio members
6 shall not be paid other allowances or any form of compensation,
7 except actual expenses in traveling to or from their residences to
8 attend Board meetings.

9 d.) Chairman/ Administrator – The President of the Philippines shall
10 appoint a professional manager as Administrator of the Authority
11 who shall be the Chairman of the Board and Chief Executive Officer
12 of the Authority. He shall receive pay and allowances and privileges
13 equal to that of a Department Secretary.

14 **SECTION 6. Organizational Structure.** – The Administrator shall,
15 subject to the approval of the Board, determine the organizational structure, the
16 staffing pattern and the number of personnel of the Authority, *define their duties*
17 *and responsibilities,* and fix their salaries and emoluments that are comparable
18 to those of similar positions in other government-owned corporations, the
19 provisions of existing rules and regulations on wage and position classification
20 notwithstanding. The Administrator shall, subject to the approval of the Board,
21 appoint and remove personnel below the rank of Assistant Administrator. The
22 number of Assistant Administrators of the Authority shall in no case exceed three
23 (3) who shall each receive a salary to be determined by the Board and approved
24 by the President.

25 **SECTION 7. General Powers and Duties of the Administrator and**
26 **Assistant Administrators.** – a.) General Powers and Duties of the
27 Administrator - The Administrator shall be responsible to the Board and shall
28 have the following powers, functions and duties:

- 1 (i) To implement, enforce and apply the policies, programs,
2 guidelines, procedures, decisions, rules and regulations
3 promulgated, prescribed, issued or adopted by the Authority;
- 4 (ii) To manage the day-to-day affairs of the Authority, and ensure
5 the operational efficiency of all its officers;
- 6 (iii) To sign contracts, to approve expenditures and payments
7 within the budget provisions, and generally do all acts for the
8 proper and efficient operations of the Authority;
- 9 (iv) To undertake research, studies and investigations and other
10 activities to support the preparation of plans for the
11 infrastructure projects that have to be undertaken and submit
12 the same for the information and approval of the Board;
- 13 (v) To negotiate with local and international financial institutions in
14 order to raise and/or borrow the necessary funds to finance
15 proposed infrastructure projects;
- 16 (vi) To perform such other duties as the Board may assign from
17 time to time.

18 a.) General Powers and Duties of the Assistant Administrators – The
19 Assistant Administrators shall be responsible to the Administrator of
20 the Authority and shall have the following general powers, functions
21 and duties:

- 22 (i) To assist the Administrator in implementing, enforcing and
23 applying the policies, programs, guidelines, procedures,
24 decisions, rules and regulations promulgated, prescribed,
25 issued, or adopted by the Authority;
- 26 (ii) To assist the Administrator in the performance of his other
27 functions and duties;

1 (iii) To perform such other duties as the Administrator may assign
2 from time to time.

3 **SECTION 8. Capitalization.** – The Authority shall have an authorized
4 capital of TEN (10) BILLION PESOS (P10,000,000,000.00). The initial paid-up
5 capital shall consist of:

6 a.) Cash contribution by the Government in the amount of TWO
7 HUNDRED MILLION PESOS (P200,000,000.00) a year for the next
8 three (3) years; which is hereby appropriated out of any fund in the
9 National Treasury not otherwise appropriated;

10 b.) All other assets which the President may transfer to the Authority as
11 part of the equity contribution of the Government.

12 **SECTION 10. Borrowing Powers.** -- The Authority may, after
13 consultation with the Bangko Sentral ng Pilipinas and the Department of
14 Finance, and with the approval of the President of the Philippines, raise funds,
15 either from local or international sources, by way of loans, credits or
16 indebtedness or issue bonds, notes, debentures, securities, and other borrowing
17 instruments, including the power to create pledges, mortgages, and other
18 voluntary encumbrances on any of its assets or properties. The loans contracted
19 by the Authority under this Section together with all interests and other sums
20 payable in respect thereof, shall constitute a charge upon all the revenues and
21 assets of the Authority and shall rank *pari passu* with one another, but shall have
22 priority over any other claim or charge on the revenue and assets of the
23 Authority: Provided; That this provision shall not be construed as a prohibition or
24 restriction on the power of the Authority to create pledges, mortgages and other
25 voluntary liens or other encumbrances on any property of the Authority.

26 Except as expressly authorized by the President of the Philippines, the
27 total outstanding indebtedness of the Authority in the principal amount in local

1 and foreign currency shall not at any time exceed the authorized capitalization of
2 the Authority.

3 The President of the Philippines, by himself or through his duly authorized
4 representative, is further hereby authorized to guarantee in the name and on
5 behalf of the Republic of the Philippines, the payments of loans or other
6 indebtedness of the Authority up to the amount herein authorized.

7 All interests paid or payable by the Authority on its loans or other forms of
8 indebtedness shall be exempt from taxes of whatsoever nature.

9 **SECTION 10. Annual Accounts.** -- The Board shall cause proper
10 accounts and other records of the Authority in relation thereto to be kept. An
11 annual statement of account shall be rendered in respect to each year. The
12 Authority shall maintain such accounts and other records under a commercial
13 system of accounting. The accounts of the Authority shall be kept and made up
14 to 31 December in each year.

15 The annual statement of accounts of the Authority shall present a true and
16 fair value of the financial position of the Authority and of the results of the
17 operations of the Authority for the year to which it relates.

18 **SECTION 11. Auditor.** -- The Commission on Audit (COA) shall be the
19 full time auditor of the Authority. For this purpose, the COA shall designate its
20 representative who shall perform the actual audit of the accounts of the
21 Authority. The Authority shall provide the COA representative and his/her staff
22 with a suitable office space, supplies, equipment, furniture and other necessary
23 operating expenses for its proper maintenance, including expenses for travel and
24 transportation. The salaries and allowances of the COA representative and his
25 staff shall be paid directly by the COA from its own appropriations and other
26 contributions. The COA representative shall, as soon as possible, but not later
27 than three (3) months after the accounts have been submitted for audit, send an

1 audit report to the Board. He may also submit such periodical or special reports
2 to the Board as may to him appear necessary.

3 **SECTION 12. Annual Report.** – The Board shall submit to the President
4 of the Philippines together with the Auditor's Report on the relevant accounts, an
5 annual report generally dealing with the activities and operations of the Authority
6 during the preceding year and containing such information relating to the
7 proceedings and policies of the Authority.

8 **SECTION 13. Separability Clause.** – If any provision of this Act shall be
9 held unconstitutional or invalid, the other provisions not otherwise affected shall
10 remain in full force and effect.

11 **SECTION 14. Repealing Clause.** – All laws, executive orders, or parts
12 thereof which are inconsistent herewith are hereby repealed or accordingly
13 amended.

14 **SECTION 15. Effectivity.** – This Act shall take effect upon its publication
15 in at least two (2) newspapers of general circulation.

16 Approved,

17