

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



'14 FEB 26 P2:10

SENATE
S.B. NO. **2145**

RECEIVED BY: *ja*

Introduced by SENATOR FERDINAND R. MARCOS, JR.

AN ACT STRENGTHENING THE PROCESS OF ACQUIRING THE RIGHT OF WAY FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS, REPEALING FOR THIS PURPOSE REPUBLIC ACT NO. 8974, OTHERWISE KNOWN AS "AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE, OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES"


Explanatory Note

National government infrastructure projects are crucial for public welfare and the country's development. They are investments in the nation's economy and future. Indeed, the delivery of basic services, the mobility of our communities, and the day-to-day operations of business on all levels depend on the existence of reliable infrastructure, such as roads, bridges, airports, seaports, water supply, classrooms, and public markets, among others.

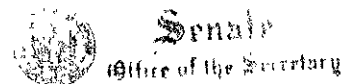
The acquisition of property needed for these projects, however, often entails a long and tedious process, which can be frustrating to both private land owners and the State. As the law stands, there are also many burdens imposed upon private land owners that discourage them from cooperating with the Government in the implementation of its infrastructure projects. As a result, many important national government infrastructure projects are often delayed to the detriment of the general public.

To balance the interests of the State and of private land owners and ensure that the nation's infrastructure projects are completed efficiently and equitably, with due consideration for private rights, there is an urgent need to remove "roadblocks", so to speak, by amending Republic Act No. 8974, otherwise known as "An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and For Other Purposes".

In view of thereof, the passage of this bill is earnestly requested.


FERDINAND R. MARCOS, JR.

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Section 1. Declaration of Policy. – Article III, Section 9 of the Constitution states that private property shall not be taken for public use without just compensation. Towards this end, the State shall ensure that owners of real property acquired for national government infrastructure projects are promptly paid adequate consideration or just compensation, while at the same time also ensuring the expeditious acquisition of the land or property requirements for the said projects.

SEC. 2. National Government Infrastructure Projects. – The term "national government infrastructure projects" shall refer to all national government infrastructure and its public service facilities, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the "Build-Operate-and-Transfer Law", and all other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.

SEC. 3. Modes of Acquiring Real Property. – The government, through the appropriate implementing agency, may acquire real property needed as right-of-way, site or location for any national government infrastructure project through donation, negotiated sale, expropriation, or any other mode of acquisition as provided by law.

In cases of land covered by Commonwealth Act No. 141, the appropriate implementing agency shall provide financial assistance to landowner concerned for the area affected under Section 112 thereof in such amount as may be determined by the implementing agency concerned, in consultation with the Commission on Audit and Office of the Local Assessor concerned, pursuant to Section 18 of Executive Order No. 1035, series of 1985. In exchange for the financial assistance given, the landowner concerned shall execute a waiver and quitclaim in favor of the Government.

SEC. 4. Standards for the Assessment of the Value of the Property in case of Negotiated Sale. – In order to facilitate the determination of the market value of the property for purposes of a negotiated sale under this Act, the following relevant factors and standards shall be observed:

- a) The classification and use for which the property is suited;
- b) The development cost for improving the land;
- c) The value declared by the owners;
- d) The current selling price of similar lands in the vicinity;
- e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements, thereon;
- f) The size, shape or location, local real property tax declaration, and zonal valuation of the land;
- g) The price of the land as manifested in the ocular inspection findings, or in oral and documentary evidence presented; and
- h) Other information, facts, events or circumstances that will enable the affected property owners to have sufficient funds to acquire similarly situated lands of approximate areas as those to be acquired from them by the government, and thereby rehabilitate themselves as early as possible.

For purposes of this Section, the implementing rules and regulations to be prepared under Section 11 hereof shall include, among other things, the Terms of Reference, which shall be used by the government financial institutions and independent property appraisers in the determination of the market value of the land. The said Terms of Reference shall define in detail the factors and standards stated in this Section.

SEC. 5. Rules on Negotiated Sale. – The implementing agency may offer to acquire, through negotiated sale, the right-of-way, site or location for a national government infrastructure project, under the following rules:

- a) The implementing agency shall offer to the property owner, as consideration for the purchase of the property the sum of:
 - i) The current market value of the land;
 - ii) The replacement cost of structures and improvements thereon; and
 - iii) The current market value of crops and trees thereon.

To determine the said price offer, the implementing agency may engage the services of a government financial institution with adequate experience in property appraisal, or an independent property appraiser accredited by the Bangko Sentral ng Pilipinas (BSP) and a professional association of property appraisers recognized by the BSP to be procured by the implementing agency in accordance with Republic Act No. 9184.

If the property owner accepts the offer for the purchase of the property through negotiated sale, the parties shall proceed to execute the necessary deed of sale as provided hereunder. If the property owner does not accept the offer, the implementing agency shall initiate the expropriation proceedings pursuant to Section 6 hereof.

Owners of structures and improvements, whether or not they have legally recognized rights to the land, shall be offered as consideration the replacement cost of structures and improvements therein, regardless of the source of funds for the project.

b) The property owner and the implementing agency shall execute a Deed of Absolute Sale, provided that the property owner has submitted to the implementing agency the certificate of title over the property, tax declaration, real property tax certificate, and other documents necessary to transfer the title to the Republic. The implementing agency shall then cause the annotation of the Deed of Absolute Sale on the certificate of title.

c) With regard to the taxes and fees relative to the transfer of title of the property to the Republic of the Philippines through negotiated sale, the implementing agency shall pay the capital gains tax, documentary stamp tax, local transfer tax, and registration fees, while the property owner shall pay all unpaid real property taxes, if any.

If requested by the property owner, the implementing agency shall remit to the Bureau of Internal Revenue (BIR) the amount corresponding to any unpaid real property tax, subject to deduction of this amount from the total negotiated price, provided, however, that the said amount is not more than the negotiated price.

d) Upon the execution of the Deed of Absolute Sale, the implementing agency shall pay the property owner:

- i) Fifty percent (50%) of the negotiated price, exclusive of taxes remitted by the implementing agency to the BIR under Paragraph (c) above, for the affected land; and
- ii) Seventy percent (70%) of the negotiated price for the affected structures and improvements, crops and trees on the land.

e) Upon issuance of a new title in the name of the Republic, the implementing agency shall pay the property owner the remaining fifty percent (50%) of the negotiated price of the affected land, and the remaining thirty (30%) of the affected structures and improvements, crops and trees, provided the land has already been completely cleared of the structures and improvements, crops and trees thereon. From this remaining amount shall be deducted the amount of unpaid taxes remitted by the implementing agency to the BIR under Paragraph (c) above, but which shall in no case exceed the total negotiated price.

f) The provisions of Section 5 shall apply retroactively to outstanding claims for right-of-way payments against the Government.

SEC. 6. Guidelines for Expropriation Proceedings. – Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure through expropriation, the appropriate implementing agency, through the Office of the Solicitor General, the Office of the Government Corporate Counsel, or their deputized government or private legal counsel, shall initiate the expropriation proceedings before the proper court under the following guidelines:

a) Upon the filing of the complaint or at anytime thereafter, and after due notice to the defendant land owner, the implementing agency shall immediately deposit with the court in favor of the owner the amount equivalent to the sum of:

- i) One hundred percent (100%) of the value of the land based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR), issued not more than three years prior to the filing of the expropriation complaint, subject to Section 6 (c) below;
- ii) The replacement cost, valued at current market value, of the structures and improvements, as determined by the implementing agency, government financial institution or independent property appraiser to be procured in accordance with Section 5 (a) hereof; and
- iii) The current market value of crops and trees located within the property, likewise determined in accordance with Section 5 (a) hereof.

In case the owner of the property cannot be found, or is unknown, or is deceased in cases where the estate has not been settled, after exerting due diligence, or where there are conflicting claims over the ownership of the property or improvements and structures thereon, the implementing agency shall deposit the amount stated above with the court for the benefit of the person to be ultimately adjudged in the same proceedings as entitled thereto, in accordance with the Rules of Court.

b) The above provision shall likewise apply to the determination of the cost of structures and improvements of all owners of structures and improvements, whether or not they have legally recognized rights to the land, regardless of the source of funds of the project.

c) Upon deposit with the court of the amount stated in Paragraph (a) above, the court shall, *motu proprio* or on motion, immediately issue the writ of possession or order to take possession of the property.

d) The court shall release the said amount to the owner upon presentation of sufficient proofs of ownership.

e) In provinces, cities, municipalities and other areas where there is no land classification or no zonal valuation, or where the existing zonal valuation is more than three years, the City or Municipal Assessor or the BIR, as the case may be, shall, within the period of sixty (60) days from the date of filing of the expropriation case, to update or cause the revision of the existing land classification and zonal valuations for the said areas.

In cases where the completion of a government infrastructure project is of utmost urgency and importance, as certified by the appropriate implementing agency, and where there is as yet no land classification or existing zonal valuation of the area concerned, or the zonal valuation is more than three years, the implementing agency shall consider and use the BIR zonal valuation and classification of lands of similar nature and characteristic located within the immediate vicinity, as the basis for valuation.

f) In the event that the owner of the property contests the implementing agency's offered amount, the court shall, within sixty (60) days from the date of filing of the complaint for expropriation, determine the just compensation to be paid to the owner. Upon finality of the court's decision, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court.

g) With regard to the taxes and fees relative to the transfer of title of the property to the Republic of the Philippines through expropriation proceedings, the implementing agency shall pay the capital gains tax, documentary stamp tax, local transfer tax, and registration fees, while the property owner shall pay all unpaid real property taxes, if any.

SEC. 7. Ecological and Environmental Concerns. – In all cases involving the acquisition of right-of-way, site or location for any national government infrastructure project, the implementing agency shall take into account the ecological and environmental impacts of the project, through the assistance of the Department of Environment and Natural Resources (DENR).

In the planning, implementation, construction, renovation and retrofitting of government infrastructure projects, the appropriate implementing agency shall always faithfully comply with environmental laws, land use laws and ordinances, and all pertinent provisions of Republic Act No. 7160, as amended, otherwise known as the Local Government Code of 1991.

SEC 8. Relocation of Informal Settlers. – The local government units and implementing agencies concerned, in coordination with the Housing and Urban Development Coordinating Council (HUDCC), the National Housing Authority (NHA) and other appropriate key shelter agencies, shall provide and develop resettlement sites, including the provision of adequate basic services and community facilities, for informal settlers that may have to be evicted or removed from the lands and properties to be acquired under this Act, in accordance with Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992.

In case of unjustifiable refusal by the informal settlers to demolish their structures and other improvements thereon, despite the issuance of the order or writ of possession by the court under Section 4 hereof, the court shall, *motu proprio* or on motion, issue the necessary order or writ of demolition for the purpose of removing or dismantling any and all structures found within the subject property. In effecting such order or writ of demolition, the implementing agency shall comply with the procedures laid down in Sections 28 and 29 of Republic Act No. 7279.

SEC. 9. Appropriations for Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects in Advance of Project Implementation. – The government shall provide adequate appropriations that will allow the concerned implementing agencies to acquire the required right-of-way, site or location for national government infrastructure projects in advance of project implementation. These appropriations shall cover the funds needed to cover the following expenses directly related to land or property acquisition under this Act:

- a) Cost of parcellary surveys and appraisal of properties affected by the project;
- b) Compensation for the project-affected land, structures and improvements, crops and trees;
- c) Cost of development and implementation of resettlement projects under this Act, including planning, social preparation, and other activities under the resettlement action plan;

- d) Related expenses of the implementing agency, including capital gains tax, documentary stamp tax, local transfer tax, and registration fees for the transfer of titles, and other related expenses for right-of-way administration and management.

In Public-Private Partnership (PPP) projects, the modalities of which are defined in Republic Act No. 7718, the implementing agency may, as part of the contract terms and conditions, require the project proponent to advance the funds covering the cost of the right-of-way which shall be reimbursed later by the implementing agency, or finance the right-of-way cost for the government which shall be recovered partly or fully by the proponent from the tolls, fees, or tariffs to be charged to the users of the completed project.

SEC. 10. Regulation of Developments within Declared Right-of-Way. – Upon the approval of a government infrastructure project by the head of the implementing agency concerned, with funding authorized in the General Appropriations Act and with defined right-of-way, no national government agency or local government unit shall, within two years from date of offer to purchase of or filing of complaint for expropriation involving the land or property subject of acquisition under this Act, allow any development or construction thereon, or issue any building, construction, development or business permit related thereto, which may be contrary to the approved plans and purposes of the project, unless explicitly authorized by the head of the implementing agency for justifiable reasons.

SEC. 11 Rules and Regulations. – Within sixty (60) days from effectivity of this Act, a Committee composed of the Secretary of the Department of Public Works and Highways (DPWH), as chairperson, and the Secretaries of the Department of Transportation and Communications (DOTC), the Department of Energy (DOE), the Department of Justice (DOJ), the Department of Budget and Management (DBM), Department of Interior and Local Government (DILG), the National Economic Development Authority (NEDA), and the Chairman of the Housing and Urban Development Coordinating Council (HUDCC), in consultation with key stakeholders from the private sector as may be determined by the Committee, shall jointly issue the necessary rules and regulations for the effective implementation of this Act.

SEC. 12. Separability Clause. If any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof shall continue to be in full force and effect.

SEC. 13. Repealing Clause. – All laws, decrees, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 14. Effectivity Clause. - This Act shall take effect immediately after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,