SENATE
OFFICE OF THE SECRETARY

13th CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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SENATE

S. BILL NO. 1350

RECEIVED BY:

Introduced by Senator Ralph G. Recto

EXPLANATORY NOTE

This bill amends Republic Act No. 6957 or popularly known as the Build-Operate-Transfer (BOT) Law as amended by Republic Act No. 7718 by limiting direct government guarantees, and prohibiting contract amendments and/or revisions.

Specifically, the bill proposes that the national government shall only assume responsibility for thirty percent (30%) of the debt incurred by the project proponent for projects located in Metro Manila; sixty percent (60%) for projects located in highly urbanized cities outside Metro Manila, and one hundred percent (100%) for projects located in areas other than Metro Manila and highly-urbanized cities.

This amendment is seen to encourage BOT projects in the countryside. Big budgeted infrastructure projects have been concentrated noticeably in Metro Manila such as the Metro Rail Transit (MRT), the SkyWay, the Metropolitan Water and Sewarage System (MWSS) concession agreements with Maynilad and Manila Water, the NAIA II and III airport terminals and on private power generation which has brought in huge costs to the consumers, particularly in the National Capital Region.

A study by the Philippine Institute for Development Studies (PIDS) in 1999, entitled "Beyond 2000: An Assessment of Infrastructure Policies" indicated that there is indeed evidence of unequal distribution of public economic infrastructure (EI). In the early 1990s, an average region would have an EI only 31.7% that of NCR. Even to this day, the figures would not have varied that much.

The study stressed that the disparity has repercussions for the long-term growth and development of the country. It cited a report which pointed out that the differences in infrastructure provision for electricity and road network between Taiwan and the Philippines explain differences in rural industrialization experienced by the two countries.

Because of the non-viability of infrastructure projects in the rural areas, the private sector usually veers away from investing in the countryside. But with full government guarantee to be limited only to projects outside highly urbanized areas, a shift in the provision of infrastructure projects is expected.

This bill also provides that the guarantees to be extended by the government shall only cover (a) fundamental risks, (b) foreign exchange convertibility risks, and (c) project specific risks.

Economists like Dr. Gilberto Llanto[1] of PIDS stressed that the risks absorbed by the government when extending comprehensive guarantees "expose taxpayers to potentially huge fiscal burdens that are not necessarily justified especially if the risks covered are commercial in nature."

Dr. Llanto recommends that government should allocate guarantees efficiently to avoid fiscal shocks that may arise once private investors call on the guarantee. He says guarantees create undue problems on the government's fiscal position especially since government relies on cash budgeting and as such, there is no adequate provision on future calls in the national budget. And this has a direct impact on the allocation of resources for social services such as health and education. Whatever deficit the government may incur out of paying a guarantee will have to be covered by a decrease in government expenditures.

Moreover, the bill also provides that all guarantees on foreign exchange convertibility shall be accompanied by a "fall-away" provision that the guarantee for foreign exchange convertibility shall cease once the country attains an investment grade rating in international capital markets for two consecutive years from Standard and Poor or Moody's or other internationally recognized rating agency of comparable standing.

According to Dr. Llanto, such a provision will minimize the government's risk exposure and potential burden on its fiscal position. He said "the exit strategy will prevent perverse incentives and moral hazard in project management and implementation."

Lastly, the bill provides that BOT contracts shall not be amended or revised except to reduce contract fees or to lift direct government guarantees or to reduce tolls, fees, rentals and charges or when the president deems necessary in the interest of the government and the general public.

Recent experiences in the PIATCO fiasco and the concession agreements of MWSS and the water concessionaires taught us the hazards of revising or amending BOT contracts. It has not only cost the government and the consumers greater financial burden but more importantly it has raised ethical and accountability questions on government's propensity to enter into contracts with the private sector.

In view of these compelling reasons, the immediate passage of this bill is thus earnestly sought.

RALPH G. RECTO

Rga/sb2204-BOT

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[1] Llanto, Gilbert M. 2000. *Managing Government Guarantees and Contingent Liabilities*. PIDS Policy Notes No. 2000-17. Makati City: Philippine Institute for Development Studies.

13th CONGRESS OF THE REPUBLIC OF THE PHILIPPINES)
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AN ACT
AMENDING REPUBLIC ACT NUMBERED SIX THOUSAND NINE HUNDRED FIFTY-SEVEN (R.A. NO. 6957), ENTITLED "AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION, AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES," AS AMENDED

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

SECTION 1. A new section is hereby added after Section 6 of Republic Act No. 6957, as amended and numbered as Section 7, to read as follows:

"SEC. 7. *DIRECT GOVERNMENT GUARANTEE.* – IN EXTENDING DIRECT GOVERNMENT GUARANTEES, THE NATIONAL GOVERNMENT SHALL ONLY ASSUME RESPONSIBILITY FOR THIRTY PERCENT (30%) OF THE DEBT INCURRED BY THE PROJECT PROPONENT FOR PROJECTS LOCATED IN METRO MANILA; SIXTY PERCENT (60%) FOR PROJECTS LOCATED IN HIGHLY URBANIZED CITIES OUTSIDE METRO MANILA, AS CERTIFIED BY THE NATIONAL STATISTICS OFFICE (NSO) AND THE DEPARTMENT OF FINANCE (DOF); AND ONE HUNDRED PERCENT (100%) FOR PROJECTS LOCATED IN AREAS OTHER THAN METRO MANILA AND HIGHLY-URBANIZED CITIES: *PROVIDED,* THAT THE GUARANTEES TO BE EXTENDED BY THE NATIONAL GOVERNMENT TO PROJECT PROPONENTS SHALL COVER ONLY THE FOLLOWING:

(A) FUNDAMENTAL RISKS CONSISTING OF SOVEREIGN AND POLITICAL RISKS SUCH AS EXPROPRIATION BY GOVERNMENT, NATIONALIZATION, CHANGES IN LAW, AND FORCE MAJEURE;

(B) FOREIGN EXCHANGE CONVERTIBILITY RISKS WHICH SHALL GIVE THE PROJECT PROPONENT THE RIGHT TO:

(i) PURCHASE FOREIGN EXCHANGE IN THE OPEN MARKET;

(ii) TRANSFER ITS FOREIGN CURRENCY FUNDS ABROAD; AND

(iii) MAINTAIN FOREIGN CURRENCY BANK ACCOUNTS IN THE PHILIPPINES OR ABROAD,

PROVIDED, THAT SUCH GUARANTEE SHALL BE ACCOMPANIED BY AN *EXPLICIT PROVISION THAT THE* GUARANTEE FOR FOREIGN EXCHANGE CONVERTIBILITY SHALL CEASE ONCE THE COUNTRY ATTAINS AN INVESTMENT GRADE RATING IN INTERNATIONAL CAPITAL MARKETS FOR TWO CONSECUTIVE YEARS FROM STANDARD AND POOR OR MOODY'S OR OTHER INTERNATIONALLY RECOGNIZED RATING AGENCY OF COMPARABLE STANDING; AND

(C) PROJECT SPECIFIC RISKS WHERE THE GUARANTEE SHALL BE LIMITED TO THE SENIOR LENDER AND FOR THE ORIGINAL TERM OF THE LOAN EXCLUDING RETURNS TO EQUITY HOLDERS.

GUARANTEES COVERED UNDER SUB-PARAGRAPH (A) SHALL BE GRANTED FREE TO ALL PROJECT PROPONENTS WHILE GUARANTEES COVERED UNDER SUB-PARAGRAPHS (B) AND (C) SHALL HAVE GUARANTEE FEES TO BE DETERMINED BY THE DOF."

SEC. 2. Section 7 of the same Act is hereby renumbered as Section 8.

SEC. 3. A new section is hereby added after Section 7 of the same *Act and numbered as Section 9, to read as follows:*

"SEC. 9. *CONTRACT AMENDMENTS AND/OR REVISIONS.* – ALL DULY SIGNED CONTRACTS ENTERED INTO BY THE GOVERNMENT OR

ANY OF ITS AGENCIES OR LOCAL GOVERNMENT UNITS COVERED UNDER THIS ACT SHALL NOT BE AMENDED OR REVISED EXCEPT TO REDUCE CONTRACT FEES OR TO LIFT DIRECT GOVERNMENT GUARANTEES OR TO REDUCE TOLLS, FEES, RENTALS AND CHARGES OR WHEN THE PRESIDENT DEEMS NECESSARY IN THE INTEREST OF THE GOVERNMENT AND THE GENERAL PUBLIC."

SEC. 4. Sections 9 and the succeeding sections of the same Act are hereby renumbered accordingly.

SEC. 5. *Implementing rules and regulations.* - The DOF, the National Economic Development Authority (NEDA), the Department of Public Works and Highways (DPWH), and other appropriate government agencies shall promulgate rules and regulations necessary for the effective implementation of this Act.

SEC. 6. *Repealing Clause.* – All laws or parts of any law inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 7. *Separability Clause.* – If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation.

SEC. 8. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,