


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

7 JUL -4 P3:00

SENATE
 S. B. No. 1086

RECEIVED BY: 

Introduced by Senator Loren Legarda

EXPLANATORY NOTE

This bill seeks to institutionalize a systematic review and evaluation of government-owned-and-controlled corporations (GOCCs) to oversee their financial condition and ensure that they contribute to the progress of the country.

GOCCs, as defined under Presidential Decree No. 2029, is "a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by special law or, if organized under the general corporation law, is owned or controlled by the government directly or indirectly through a parent corporation or subsidiary corporation, the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock." EO No. 64 of 1993 expanded the definition as follows: "...a corporation created by special law or incorporated and organized under the Corporation Code and in which government, directly or indirectly, has ownership of the majority of the capital stock.

In a paper done by the Senate Economic Planning Office (SEPO) on the profile of selected Philippine GOCCs released in 2006, there were a total of 133 GOCC as of June 2004. Its consolidated total assets amounted to P4.5 trillion, which grew by 0.24 percent from the previous year while its total liabilities declined by 4.97 percent to P3.7 trillion during the same year from the P3.9 trillion balance in 2003. According to SEPO, studies have shown that public corporations generally perform poorly compared to private corporations. A World Bank (1995) study identified three reasons why GOCCs or state-owned enterprises (SOEs) perform poorly: 1.) No one has a clear stake in generating positive returns because there is no single identifiable owner since government can be the ministries, or parliament or the general public; 2.) Many SOEs have multiple or conflicting objectives. Government creates a corporation to address social objectives such as lowering the price of a socially-sensitive good, yet the corporation is expected to maximize returns; and 3. Access to subsidies, transfers and guaranteed loans create a moral hazard such that there is no incentive to be efficient since there is no threat of bankruptcy.

The same paper said that the poor financial condition of the GOCCs studied arises from operational factors and inconsistent policy objectives of government. Most of the 14 GOCCs are mandated to provide services with social objectives, which result in losses. In these cases, government is obliged to subsidize their operations. Likewise, some of the GOCCs' operations require huge capital investments which government cannot afford given its budgetary constraints. The consequence is that there is heavy reliance on debt particularly on foreign loans. The high foreign debt exposure, in turn, makes these GOCCs vulnerable to foreign exchange and interest rate risks. Another

factor is the moral hazard problem in the operations of GOCCs and their conduits/end). Many of the GOCCs have less incentive to perform efficiently because government guarantees their debt. In some instances, there is little restraint in *spending*. Finally, there is no single entity that exercises the ownership function of the state on the GOCCs. The rights and functions of the state as an owner are largely exercised through the department to which they are attached. The monitoring of the overall performance of GOCCs is also dispersed among the various departments in which they are attached.

This bill mandates all GOCCs to submit regularly to a sunset review by both the Committees of the Senate and the House of Representatives having legislative jurisdiction over the said corporations, the interval between each review to be not more than a period of five (5) years. Under this proposed measure, sunset review shall refer to the systematic evaluation by Committees of the Senate and the House of Representatives having legislative jurisdiction over government-owned or controlled corporations to determine if the said corporations merit continued government participation and/or subsidy.

In view of the benefits that will be gained for the efficient operations of GOCCs, immediate passage of this bill is earnestly requested.




LOREN LEGARDA
Senator

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AN ACT
PROVIDING FOR A SYSTEMATIC AND PERIODIC REVIEW OF THE ECONOMY,
EFFICIENCY AND VIABILITY OF GOVERNMENT-OWNED OR CONTROLLED
CORPORATIONS AND FOR OTHER PURPOSES

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

SECTION 1. Short Title. - This Act shall be known as the "Philippine Sunset Act of 2007".

SEC. 2. Declaration of Policy. - It is hereby declared the policy of the State to promote economy and efficiency of government-owned or controlled corporations shall be subjected to the interest of the common good and the test of economic viability.

Toward this end, the State, in order to promote private sector initiative, shall only engage in business areas where private sector is not in participation, or when the public good so requires.

SEC. 3. Definition of Terms. - For purposes of this Act:

- (a) "Sunset Review" shall refer to the systematic evaluation by Committees of the Senate and the House of Representatives having legislative jurisdiction over government-owned or controlled corporations to determine if the said corporations merit continued government participation and/or subsidy;
- (b) "Government-owned or Controlled Corporation" or subsequently referred to as "GOCCs", shall refer to a stock or non-stock corporation, performing governmental or proprietary functions directly chartered by special law or if otherwise formed, is owned or controlled by the government directly or indirectly, through a parent corporation or subsidiary corporation to the extend of at least majority of its outstanding capital stock in the case of a stock corporation, or by being represented by at least the majority of its voting members, in the case of a non-stock corporation: Provided, that an acquired asset corporation as defined hereunder shall not be considered a government -owned or controlled corporation.

For purposes of this Act, a corporation created by special law and explicate intended for ultimate transfer to private ownership under certain specified conditions shall be considered a government -owned or controlled corporation until it is transferred to private ownership.

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(c) "Acquire Asset Corporation" shall refer to a corporation which is:

(1) Under private ownership, with at least the majority of its outstanding capital stock:

(a) Conveyed to the government, or any of its agencies or instrumentalities including government-owned or controlled corporations, in satisfaction of debts whether by foreclosure or otherwise; or

(b) Duly acquired by the government through final judgment in sequestration proceeding; or

(2) A Subsidiary of a government-owned or controlled corporation formed exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith.

SEC. 4. Conduct of Review. - GOCCs shall be regularly subjected to a sunset review by both the Committees of the Senate and the House of Representatives having legislative jurisdiction over the said corporations, the interval between each review to be not more than a period of five (5) years.

SEC. 5. Scope of Review. - The concerned committees of the Senate and of the House of Representatives shall review the economy, efficiency and the need to maintain the GOCCs using the following:

- (a) Their efficient allocation and use of investment resources made available to them by the government;
- (b) Instances where there is needless duplication or overlap of functions with other GOCCs;
- (c) Accomplishment of set goals for the GOCCs in case their charter provides for such;
- (d) Financial and social investment returns and productivity;
- (e) Existence of private sector participation in the field of operation or industry; and
- (f) The interest of the common good.

SEC. 6. Consolidated Recommendation. - The concerned committees of the Senate and the House of Representatives, at the termination of their respective sunset reviews, shall submit a consolidated recommendation to the Senate Finance Committee and the House of Committee on Appropriations for appropriate action.

SEC. 7. Possible Actions or Recommendation. – the concerned committees of the Senate and the House of Representatives may recommend:

- (a) The continued existence of and the corresponding budgetary allocation for the subject GOCC;
- (b) The termination of the existence of, or budget allocations for, the GOCC by either privatizing the said subject GOCC or dissolving the said GOCC; and
- (c) Such other recommendation or course of action they may deem as necessary.

SEC. 8. Duty of Disclose. – GOCCs under sunset review shall be duty-bound to disclose all pertinent information and make available all relevant documents to the reviewing committees of Congress.

The officers and directors of the GOCC shall be primarily tasked to perform all the necessary acts under this Section. Failure on their part to disclose all the pertinent information required by the reviewing congressional committees, or any intentional attempt to delay the proceedings, for whatever purpose, shall subject such officers and directors to administrative, civil and criminal sanctions under existing laws.

SEC. 9. Separability Clause. – if for any reason, any section or provision of this Act, or any portion thereof, is declared invalid or unconstitutional such parts not affected thereby shall remain in full force and effect.

SEC. 10. Repealing Clause. – All laws, decrees, executive orders, rules and regulations that are inconsistent with this Act are hereby repealed or modified accordingly.

For purposes of this Act, the Government Corporate Monitoring and Coordinating Committee, created under Executive Order No. 936 dated 26 February 1984, reconstituted under Memorandum Circular No. 10 dated 19 May 1986, and strengthened under Executive Order No. 236 dated 22 July 1987, shall continue to exercise its powers and functions, and shall complement the congressional review mechanism created under this Act.

SEC. 11. Effectivity. – This Act shall take effect fifteen (14) days after its publication in at least two (2) newspapers of general circulation.

Approved,