

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

7 OCT 23 1976

SENATE  
S. No. 1794

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INTRODUCED BY HONORABLE MAR ROXAS

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EXPLANATORY NOTE

Official Development Assistance (ODA), as defined in Republic Act 8182, as amended by Republic Act No. 8555, is a loan or a grant administered with the objective of promoting sustainable social and economic development and welfare of the Philippines. Since domestic resources are not enough to finance domestic investments needed for economic growth and development, the country, therefore, resorts to foreign resources to supplement existing resources. ODA, thus, provides a relatively more concessional means of financing government programs and projects.

While the objectives of the ODA Law is laudable, as this will mean more infrastructure projects that will greatly aid in the growth and development of the country, ODA has, unfortunately, been used to muddle, if not to avoid, the requirement of competitive bidding in the procurement of goods, services, and infrastructure projects. Under the current ODA law, particularly under Section 11-A thereof, the application of the country's procurement laws may be waived or modified, which thereby negates the possibility of a price challenge that would help lower the debt expenditure of the government. What then is the guarantee of the country that the loan contracted as ODA was tightly negotiated and in accordance with sound procurement practice if the same did not go through competitive bidding?

It is also noteworthy that during the passage of the ODA law, as well as during the passage of the amendatory law thereto (Republic Act No. 8555), the country did not yet have a consolidated procurement law that is now embodied in Republic Act No. 9184, otherwise known as the *Government Procurement Reform Act*, which mandates, among others, the use of competitive bidding in the procurement of goods, services, and infrastructure projects that would help ensure the most advantageous price for the country.

Thus, in order to avoid "lender-driven" contracts from foreign countries, which often prescribe either their own contractor that eliminates the application of competitive bidding or their own procurement process, and in order to curb corruption through the padding of prices in the procurement of goods, services, and infrastructure projects, this bill seeks to establish a check and balance in contracting ODA loans relative to the procurement of goods, services, and infrastructure projects by making the same the subject of review and approval by the Senate prior to its perfection and consummation.

Moreover, a more stringent standard on what should be considered as ODA must also be set in place so as to minimize the foreign debt servicing of the government and to ensure better financial terms in the availment of foreign loans.

In view of the foregoing, the approval of this bill is earnestly sought.

  
M A R Roxas  
Senator

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AN ACT  
IMPOSING SAFEGUARDS IN CONTRACTING LOANS CLASSIFIED AS OFFICIAL  
DEVELOPMENT ASSISTANCE, AMENDING FOR THE PURPOSE REPUBLIC ACT NO.  
8182, AS AMENDED BY REPUBLIC ACT NO. 8555, OTHERWISE KNOWN AS THE  
OFFICIAL DEVELOPMENT ASSISTANCE ACT OF 1996, AND FOR OTHER PURPOSES.

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

1 SECTION 1. Section 2 of Republic Act No. 8182, as amended, otherwise known as the  
2 Official Development Assistance Act of 1996, is hereby amended to read as follows:  
3 Sec. 2. Official Development Assistance (ODA). — For purposes of this Act,  
4 ODA is a loan or loan and grant which means all of the following criteria:  
5 (a) It must be administered with the objective of promoting  
6 sustainable social and economic development and welfare of the  
7 Philippines;  
8 (b) It must be contracted with governments of foreign countries  
9 with whom the Philippines has diplomatic, trade relations or  
10 bilateral agreements or which are members of the United  
11 Nations, their agencies and international or multilateral lending  
12 institutions;  
13 (c) There are no available comparable financial instruments in  
14 the capital market; and

1 (d) It must contain a grant element of at least [twenty-five]  
2 FORTY percent (40%). Grant element under this Act is the  
3 reduction enjoyed by the borrower whenever the debt service  
4 payments which shall include both principal and interest and  
5 expressed at their present values discounted at ten percent  
6 (10%) OR AT THE YIELD ON COMPARABLE COMMERCIAL  
7 BONDS MOST RECENTLY ISSUED BY THE NATIONAL  
8 GOVERNMENT, WHICHEVER IS LOWER, are less than the  
9 face value of the loan or loan and grant. The grant element of a  
10 loan or loan and grant is computed at the ratio of (i) the  
11 difference between the face value of the loan or loan and grant  
12 and the debt service payments to (ii) the face value of the loan  
13 or loan and grant;

14 SECTION 2. Section 11-A of Republic Act No. 8182, as amended, is hereby amended to  
15 read as follows:

16 Sec. 11-A. In the contracting of any loan, credit or indebtedness under this Act  
17 or any law, the President of the Philippines may, when necessary, agree to  
18 waive or modify the application of any provision of law granting preferences  
19 in connection with, or imposing restrictions on, the procurement of goods or  
20 services OR INFRASTRUCTURE PROJECTS: *Provided, however,* IF THE  
21 PROCUREMENT DOES NOT GO THROUGH COMPETITIVE BIDDING  
22 MANDATED UNDER REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS  
23 THE *GOVERNMENT PROCUREMENT REFORM ACT*, THE LOAN TO BE  
24 OBTAINED, REGARDLESS OF CLASSIFICATION, PRIOR TO ITS  
25 PERFECTION AND CONSUMMATION, AS WELL AS THE GOOD,

1 SERVICE, OR INFRASTRUCTURE PROJECT THAT IS INTENDED TO BE  
2 FUNDED THEREWITH, SHALL BE THE SUBJECT OF REVIEW AND  
3 RATIFICATION BY AT LEAST TWO-THIRDS (2/3) OF THE MEMBERS OF  
4 THE SENATE; *Provided, further,* That as far as practicable, utilization of the  
5 services of qualified Filipino citizens or corporations or associations owned by  
6 such citizens in the prosecution of projects financed under this Act shall be  
7 prepared on the basis of the standards set for a particular project: PROVIDED,  
8 FINALLY, That the matter of preference in favor of articles, materials, or  
9 supplies of the growth, production or manufacture of the Philippines,  
10 including the method or procedure in the comparison of bids for purposes  
11 therefor, shall be the subject of agreement between the Philippine  
12 Government and the lending institution. (*as amended by R.A. 8555*)

13 SECTION 3. *Separability Clause.* – Any portion or provisions of this Act that may be  
14 declared unconstitutional or invalid shall not have the effect of nullifying other portions and  
15 provisions hereof as long as such remaining portion or provision can still subsist and be given  
16 effect in their entirety.

17 SECTION 4. *Repealing Clause.* – All laws, decrees, executive orders, proclamations and  
18 administrative regulations, or parts thereof inconsistent herewith are hereby repealed or  
19 modified accordingly.

20 SECTION 5. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its  
21 publication in at least two national papers of general circulation.

Approved,