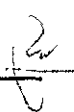


FIFTEENTH CONGRESS)
CONGRESS OF THE PHILIPPINES)
Second Regular Session)

Office of the Secretary

11 DEC 15 P4:39

Senate Bill No. **3090**

RECEIVED BY: 

Introduced by Senator Edgardo J. Angara

EXPLANATORY NOTE

This bill seeks to enhance the public-private partnership for infrastructure development in the Philippines, in line with the Philippine Development Plan and the thrust and priorities of the current administration.

The state recognizes the role of the private sector in propelling national growth and development through financing the construction, operation and maintenance of projects normally undertaken by government. The state is committed to encouraging investment in public infrastructure by providing due incentives for companies that wish to participate.

However, interest in public-private partnership has been scarce in the past decade due to various policy and fiscal difficulties, not the least of which are shortcomings in the earlier RA 7718 or the Philippine Build and Operate Transfer (BOT) Law.

This bill seeks to revive private sector participation by filling the gaps of the BOT Law. It seeks to establish a legal framework that courts investment through adequate protection of rights and the consistent enforcement of contracts. It also seeks to uphold competitive bidding as the core of government procurement policy. When enacted, this bill will make public-private partnership more hospitable to investors, and thus stimulative of national development.

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


EDGARDO J. ANGARA

Senate Bill No. **3090**

RECEIVED BY: *(signature)*

Introduced by Senator Edgardo J. Angara

**AN ACT ENHANCING THE PUBLIC PRIVATE PARTNERSHIP (PPP) IN
INFRASTRUCTURE DEVELOPMENT IN THE PHILIPPINES**

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

Section 1. Short Title.- This Act shall be known as the “Public-Private Partnership in
Infrastructure Development Act of 201_”

Sec. 2. Declaration of Policies.- It is hereby declared the policy of the State to:

- a. Recognize the indispensable role of the private sactor as the main engine for
national growth and development;
- b. Create an enabling environment for public-private partnership (PPP) projects,
that is, private sector investment in public infrastructure for efficient provision
of public services;
- c. Recognize the long term nature of private investment in infrastructure and
services and to mitigate the associated risks by ensuring that the validity and
enforceability of contracts are respected through the due process of law;
- d. Encourage private investment in public infrastructure and/or public services
that:
 - 1. Yields value for money for the State by allocating risks to the party best
able to manage them;
 - 2. Is affordable in light of overall budgetary sustainability, forward
commitment in realtion to the public expenditure and the potential returns
on the private sector investment;
 - 3. Maximizes the benefits of the private sector efficiency, expertise,
flexibility and innovation;
 - 4. Is financialy viable; and
 - 5. Is desired in light of economic and social benefits and costs;
- e. Ensure a consistent approach among government agencies at both national and
local levels in the adjudication, design, assessment, solicitation and
management of projects; and
- f. Build capacity of government agenvies and local government units (LGUs) to
avail themselves of investment opportunities.

Sec. 3. Scope of Contractual Arrangements.- For this purpose, the government agencies
including government owned and controlled corporations (GOCCs) and LGUs may
select from the list of contractual arrangements provided below: Provided, however,
each agency may adopt other contractual arrangements that may be decided upon
during contract negotiations; Provided finally that new contractual arrangements not
listed under this Act may be adopted but shall be approved by the Investment
Coordination Committee (ICC)). The contractual arrangements are as follows:

- 1 a. Build-Operate-and-Transfer (BOT)- A contractual arrangement whereby the
2 project proponent undertakes the construction, including financing, of a given
3 infrastructure facility, and the operation and maintenance thereof. The project
4 proponent operates the facility over the fixed term during which it is allowed
5 to charge facility users appropriate toll fees, rentals and charge not exceeding
6 those proposed in its bid or as negotiated and incorporated in the contract to
7 enable the project proponent to recover its investment, and operating and
8 maintenance expenses in the project. The project proponent shall transfer the
9 facility to the government agency or LGU concerned at the end of the fixed
10 term which shall not exceed fifty (50) years; Provided, that in case of an
11 infrastructure or development facility the operation of which requires a public
12 utility franchise, the proponent must be Filipino or, if a corporation, must be
13 duly registered with the Securities and Exchange Commission (SEC), and
14 owned up to at least sixty percent (60%) by Filipinos.

15
16 The BOT shall include a supply-and-operate situation, which is a
17 contractual arrangement whereby the supplier of equipment and machinery for
18 a given infrastructure facility, if the interest of the government so requires,
19 operates the facility and in the process provide technology transfer and
20 training to Filipino nationals.

- 21
22 b. Build-and-Transfer (BT)- A contractual arrangement whereby the project
23 proponent undertakes the financing and construction of a given infrastructure
24 or development facility and after its completion turns it over to the
25 government agency or LGU concerned, which shall pay the proponent on an
26 agreed schedule its total investments expended on the projects, plus a
27 reasonable rate of return thereon. This arrangement may be employed in the
28 construction of any infrastructure or development project, including, critical
29 facilities which for security or strategic reasons must be operated by the
30 government.
- 31
32 c. Build-Own-and-Operate (BOO)- A contractual arrangement whereby the
33 project proponent is authorized to finance, construct, own, operate and
34 maintain an infrastructure or development facility from which the proponent is
35 allowed to recover its total investment, operating and maintenance costs plus
36 reasonable return thereon by collecting tolls, fees, rentals or other charges
37 from the facility users; Provided, that all such projects, upon recommendation
38 of ICC, shall be approved by the President of the Philippines as chair of the
39 NEDA Board. Under this project, the proponent that owns the assets of the
40 facility may assign its operation and maintenance to a facility operator.
- 41
42 d. Build-Lease-and-Transfer (BLT)- A contractual arrangement whereby a
43 project proponent is authorized to finance and construct an infrastructure or
44 development facility and upon its completion turns it over to the government
45 agency or LGU concerned on a lease arrangement for a fixed period after
46 which ownership of the facility is automatically transferred to the government
47 agency or LGU concerned.
- 48
49 e. Build-Transfer-and-Operate (BTO)- A contractual arrangement whereby the
50 public sector contracts out the building of an infrastructure facility to a
51 private entity such that the contractor builds the facility on a turn-key basis,
52 assuming cost overrun, delay, and specified performance risks.

53
54 Once the facility is commissioned satisfactorily, title is transferred to the
55 implementing agency. The private entity, however, operates the facility on
56 behalf of the implementing agency under an arrangement.
57

- f. Contract-Add-and-Operate (CAO)- A contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the government. It operates the expanded project over an agreed franchise period. There may or may not be, a transfer arrangement in regard to the facility.
- g. Development-Operate-and-Transfer (DOT)- A contractual arrangement whereby favorable conditions external to a new infrastructure project, which is to be built by a private project proponent, are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.
- h. Rehabilitate-Operate-and-Transfer (ROT)- A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.
- i. Rehabilitate-Own-and-Operate (ROO)- A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can operate the facility in perpetuity.

Sec. 4. Private Delivery of Public Infrastructure and/or Services.- (1) Any government agency or LGU may contract with the private sector for the delivery of public infrastructure and/or services in any of the following areas:

- a. Energy, including oil and gas;
- b. Transport, including railways, roads, tunnels, bridges, ports, canals, channels, airports, pipelines;
- c. Water, including water storage and wastewater;
- d. Communications;
- e. Information Technology;
- f. Education;
- g. Health;
- h. Tourism;
- i. Culture, Sports, and Leisure Facilities;
- j. Government Buildings, Industrial Estates and Townships, and Housing;
- k. Markets, Warehouses, and Slaughterhouses;
- l. Any other area as may be prescribed.

(2) Contractual arrangements that may be utilized for the purposes of projects contemplated in Section 3 shall be determined during the negotiations between the government agency or LGU and the private sector.

(3) For the purpose of this section and subsequent reference in the following sections “prescribed” means prescribed in the IRR issued pursuant to this Act, except as otherwise indicated.

Sec. 5. Project Preparations.- (1) Each government agency or LGU shall within its areas of responsibility prepare a project for approval by the approving authority mentioned in Section 6 of this Act.

(2) Prior to preparing a project for approval, the head of the concerned government agency or LGU shall review or assess the following:

- a. The risks associated with the proposed project taking into account the various methods of sharing these risks; and
- b. The economic and financial feasibility of the proposed project, including a comparison of the costs and benefits of implementing the project in terms of this Act with the costs of implementation in another form.

(3) A government agency or LGU that lacks the capacity to prepare a project in the manner prescribed, including the pre-bidding, bidding, contract management stages of the project, can tap the Project Development Facility (PDF). The PDF will provide the fund, the start-up capital of which shall come from the national government budget or grants from donors of Official Development Assistance (ODA). In the case of a government agency, the PDF shall be appropriated within its budget ceiling to enable the government agency to solicit assistance or expert advice as necessary. In the interest of sustainability, the winning bidder for a PPP project shall be required to compensate for the cost that the government agency expended in developing its proposal. In the case of LGUs, the Department of Finance (DOF) shall act as the custodian of the PDF and the winning bidder for a LGU-initiated PPP project shall likewise compensate the costs expended in developing the proposal. In the event that resources from the PDF are expended in the developing the required assistance within the prescribed period, the government agency or LGU shall report to the ICC and NEDA Board, respectively.

Sec. 6. Approving Authority.- The National Economic Development Authority (NEDA) shall issue the necessary rules and regulations for the effective implementation of this Act. To this end, the NEDA Board, through the Investment Coordination Committee (ICC), shall request national agencies and local government units to submit program reports of PPP projects:

- (1) A national government agency that has identified and prepared a project in the manner specified in Section 5 shall:
 - a. Be required to endorse through the head of the government agency, the project proposal and contract to the ICC. This endorsement shall serve as the first-pass approval for the project and draft contract. All government agencies are required to review technical, legal, financial, economic, and social implications of the project and approve the same prior to endorsement to the ICC;
 - b. Submit projects of major national importance with a contract value above an amount as may be prescribed, to the NEDA Board for approval; all other projects to the ICC for approval.
- (2) All local government PPP projects shall be approved following the provisions of the Local Government Code.

Sec. 7. Implementing, Monitoring and Auditing Functions.- (1) A government agency or LGU that has secured approval for a project in the manner provided in Sec. 6 of this Act, shall be responsible for the implementation, management and supervision of the project. Regular monitoring reports shall be submitted to the ICC for its information.

- (2) Regular auditing shall likewise be conducted following Commission on Audit (COA) guidelines. Reports may be required from the respective government agency, LGU or COA as deemed necessary.

Sec. 8. Competitive Bidding Procedures.- (1) Competitive bidding procedures shall apply to all projects for which private investment is solicited in terms of this Act.

1 (2) Under exceptional cases, government agencies may resort to direct negotiations
2 under such conditions prescribed in Section 3 of RA 9184. LGUs may resort to direct
3 negotiations under the conditions prescribed under the Local Government Code and/or
4 RA 9184 as may be applicable. Such conditions shall include a requirement that the
5 government agency or LGU must give public notice in the prescribed manner of:
6

- 7 a. The intention to enter into direct negotiations;
- 8 b. The conclusion of negotiations to enter into a contract through direct
9 negotiations; and
- 10 c. The salient terms of the contract to be concluded.

11
12 (3) A government agency will only entertain an unsolicited proposal provided that such
13 proposal is not contained in its prioritized projects in the Medium Term Philippine
14 Investment Program (MTPIP). In the case of LGUs, an unsolicited proposal may be
15 entertained provided it does not appear in the local development plan of the LGU
16 concerned.

17
18 In addition, the unsolicited proposal to be acceptable is subject to other conditions
19 as follows:
20

- 21 a. The government agency or LGU has notified in writing the approving
22 authority within seven (7) working days of the receipt of the proposal;
- 23 b. The head of the government agency or LGU has conducted an assessment as
24 contemplated in Section 5(2) and has certified in writing to the approving
25 authority that it is capable of conducting all proceedings relating to the
26 proposal;
- 27 c. The head of the government agency or the LGU certified in writing that the
28 proposed project serves the public interest;
- 29 d. The proposal does not entail the provision of any form of government
30 guarantee, subsidy or undertakings as may be prescribed;
- 31 e. The proposal complies with such requirements for unsolicited proposals as
32 may be prescribed; and
- 33 f. The proponent has indicated its costs for developing the proposal in the
34 prescribed manner.

35
36 (4) Notwithstanding compliance by any government agency or LGU with the
37 provisions of subsection (3) Section 8 of this Act, the ICC may direct a government
38 agency or LGU not to proceed with its consideration of an unsolicited proposal until
39 such time as the latter satisfies the approving authority that:
40

- 41 a. It has access to adequate resources to properly assess the proposal, to conduct
42 the evaluation of comparative proposals, to conduct negotiations and to
43 oversee implementation; and
- 44 b. The proposal meets such requirements related to the public interest as may be
45 prescribed.

46
47 (5) All unsolicited proposals shall be subject to the comparative proposals after
48 approval by the approving authority, in the manner as may be prescribed.
49

50 (6) A government agency of LGU may, during its negotiation and before issuing a
51 request for comparative proposals, negotiate with the proponent that the latter be
52 compensated for the cost of developing the proposal and to submit the proposal to
53 competitive bidding procedures. The government agency of LGU shall introduce, as
54 part of the bidding conditions, a requirement that the winning bidder (if not the original
55 proponent) reimburse the original proponent of its costs in developing the proposal or
56 for such amount as the government agency or LGU and the proponent may agree
57 beforehand in writing.

(7) Non-compliance with the provision of subsection (3) hereof shall be ground for declaring a contract null and void.

Sec. 9 Contract and Public Disclosure.- (1) Reproduction of copies of all contracts concluded in terms of this Act shall be the responsibility of the government agency or LGU. The said government agency or LGU is required to forward a copy of the signed agreement to the ICC for record purposes.

(2) The grant of access to the signed agreements by the public shall be the responsibility of the government agency or LGU.

Sec. 10. Validity of Contracts.- (1) No party shall in any proceedings before any court, allege the invalidity of any contract concluded under this Act on the grounds of non-compliance with the provision of this Act or its IRR after a period of of ninety (90) days has elapsed from the date of publication of the approval of the government-procured project in the Official Gazette.

Sec. 11. Contract Termination.- In the event that a project is revoked, cancelled or terminated by the government through no fault of the project proponent or by mutual agreement, the project proponent shall be compensated by the government as provided for in the contractual agreement.

In cases where the government defaults on certain major obligations in the contract and such failure cannot be remedied or if it can be remedied, shall remain unremedied for an unreasonable length of time, the project proponent may, by prior notice to the concerned government agency or LGU, specifying the turn-over date, terminate the contract. The private proponent shall likewise be compensated by the government according to the provisions of the contractual agreement.

Sec. 12. Investment Promotion.- There shall be established a build-operate-and-transfer center to be attached as a unit to the Department of Trade and Industry (DTI) to be known as the Public Partnership Center (PPC) which shall have the following responsibilities:

- a. Promote and market the government's private-sector investment program, including the formulation and implementation of a promotion and marketing plan, providing service as an information center for investors/developers as well as for government agencies;
- b. Participate in the technical working group (TWG) that may be established by the IRR Committee;
- c. Perform business development and investment related activities in support of the other functions and mandate of the DTI; and
- d. Perform such other functions as may be prescribed under the IRR.

Sec. 13. Liability.- In accordance with Section 38, Chapter 9 of the Administrative Code of 1987, the head of the government agency shall not be held liable for acts done in the performance of his official duties, to undertake the purposes of implementing this Act or its IRR unless there is a clear showing of bad faith, malice or gross negligence.

Sec. 14. Implementing Rules and Regulations.- (1) The IRR issued by virtue of Republic Act No. 6957 as amended by Republic Act No. 7718 shall remain in full force and effect until repealed.

(2) The IRR committee may, subject to the approval of the NEDA Board and after conducting public consultations and publication as required by law, issue the IRR to

1 provide for the implementation of this Act in the most expeditious manner. The
2 committee may, as needed, update such IRR from time to time.

3
4 (3) Without limiting the generality of the foregoing, the IRR may provide for:

- 5
6 a. Contractual arrangements and repayment schemes that may be entered into
7 this Act;
8 b. Areas in which private investment may be solicited;
9 c. Institutional arrangements for bid management;
10 d. Manner of preparation and content of documents, including, clarifications and
11 pre-bid conferences;
12 e. Qualifications or proponents, contractors, bidders, and facility operators;
13 f. Procedures for competitive bidding;
14 g. Procedures for direct negotiation;
15 h. Procedures for unsolicited proposals;
16 i. Contract negotiation and award;
17 j. Contract approval and implementation;
18 k. Investment incentives, government guarantees, support and undertaking;
19 l. Contract management, coordination, monitoring and auditing;
20 m. The powers, functions and duties of concerned agencies;
21 n. Any other matter required for the expeditious implementation of this Act.

22
23 (4) For the purposes of this section, "committee" means a committee created by the
24 President comprising one representative from each of the following:

- 25
26 a. Department of Public Works and Highways (DPWH);
27 b. Department of Transportation and Communication (DOTC);
28 c. Department of Energy (DOE);
29 d. Department of Trade and Industry (DTI);
30 e. Department of Finance (DOF);
31 f. Department of Interior and Local Government (DILG);
32 g. National Economic and Development Authority (NEDA);
33 h. Department of Budget and Management (DBM); and
34 i. Office of the President (OP).

35
36 *Sec. 15. Repealing Clause.*- Any law, particularly Republic Act No. 6957 as amended by
37 Republic Act No. 7718, Presidential Decree, Executive Order, Rules and Regulations,
38 contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

39
40 *Sec. 16. Separability Clause.*- If any provision of this Act is held invalid, the other
41 provisions not affected thereby shall continue to be in full force and effect.

42
43 *Sec. 17. Effectivity Clause.*- This Act shall take effect fifteen days after its publication in
44 the Official Gazette and in at least two (2) newspaper of general circulation.

45
46
47 Approved,
48
49