

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

'04 JUN 30 P5:58

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S E N A T E

S. No. 487

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Introduced by Senator S. R. Osmeña III

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#### EXPLANATORY NOTE

The government recognizes the primary role being played by government-owned and controlled corporations (GOCCs) in undertaking desirable economic activities, especially in the production and distribution of goods and services. These corporations have assumed an increasingly important role in the national endeavor for accelerated economic and social development. Their continued expansion and growth through the years manifest the magnitude of their impact on the economic recovery of our country. GOCCs have generated income to our cash-strapped government and have provided employment to several of our citizens.

However, most GOCCs have become financial burdens. The government has been providing financial assistance to them to enable to continue and sustain their operations.

"SEC. 16 of Article XII of the Constitution provides that GOCCs should be established only by special charters in the interest of the common good and subject to the test of economic viability."

Further, Section 20 of Article II states, to wit:

"The State recognizes the indispensable role of the private sector, encourages private enterprises, and provides incentives to needed investments."

Given these guidelines, the State should continuously evaluate and review existing GOCCs to determine whether they satisfy the tests as enshrined in our Constitution. There is a need to improve the operations of government-owned and controlled corporations in order to promote economy, efficiency and effectiveness in the delivery of public service. They must answer to the common good of the people, be financially viable, provide social benefits and not unduly compete with private sector.

This bill institutionalizes such mechanism of systematic review and evaluation of GOCCs. The need to allocate our already scarce resources dictates that such measure is done soonest to hasten the attainment of economic recovery.

Early passage of the bill is, therefore, earnestly sought.

*S. Osmeña III*  
**SERGIO OSMEÑA III**  
Senator

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

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

1 SECTION 1. **Short Title.** – This Act shall be known as the “Sunset Act of  
2 2004”.

3 SEC. 2. **Declaration of Policy.** – It is hereby declared the policy of the  
4 State to promote economy and efficiency of government-owned and controlled  
5 corporations. Pursuant to Article XII, Section 16 of the Constitution, such  
6 government-owned and controlled corporations shall be subjected to the interest  
7 of the common good and the test of economic and financial viability.

8 In order to promote private sector initiative, the State shall engage in  
9 business only in activities where there is lack of private sector participation, or  
10 when the public good so requires.

11 SEC. 3. **Definition of Terms.** – For purpose of this Act, the term:

12 a) Sunset Review- shall refer to the systematic evaluation by committees  
13 of the Senate and the House of Representatives which have legislative  
14 jurisdiction over government-owned or controlled corporations to determine if the  
15 said corporations merit continued government participation and/or subsidy;

1           b) Government-owned or Controlled Corporation or subsequently referred  
2 as "GOCC"- shall refer to a stock or non-stock corporation, performing  
3 governmental or propriety functions directly chartered by special law or if  
4 otherwise formed, is owned or controlled by the government directly or indirectly  
5 through a parent corporation or subsidiary corporation to the extent of at least a  
6 majority of its outstanding capital stock in the case of a stock corporation, or by  
7 being represented by at least the majority of its voting members, in the case of a  
8 non-stock corporation: Provided, That an acquired asset corporation as defined  
9 hereunder shall not be considered a government-owned or controlled  
10 corporation, until it is transferred to public ownership.

11           c) Acquired Asset Corporation- shall refer to a corporation which is:

12           1. Under private ownership, with at least the majority of its outstanding  
13 *capital stock*:

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

17           (b) Duly acquired by the government through final judgement in a  
18 sequestration proceeding; or

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

23           SEC. 4. **Coverage.** – All GOCCs, as defined in Section 3 (b) shall be  
24 governed by the provisions of this Act.

25           SEC. 5 **Conduct of Review.** – GOCCs shall be regularly subjected to a  
26 sunset review by both the Committees of the Senate and of the House of  
27 Representatives having legislative jurisdiction over the said corporations, the  
28 interval between each review to be not more than a period of two (2) years.

1           SEC. 6. **Scope and Review.** – The concerned committees of the Senate  
2 and the House of Representatives shall review the GOCCs under their  
3 jurisdiction based on, but not limited to, the following:

4           a) their efficient allocation and use of investment resources made  
5 available to them by the government;

6           b) instances where there is needless duplication or overlap of function  
7 with other GOCCs;

8           c) accomplishment of set goals for the GOCCs, in case their charter  
9 provides for such;

10          d) financial and social investment rate of returns and productivity;  
11 existence of private sector participation in the field of operation or industry, and,

12          e) the interest of the common good.

13          SEC. 7. **Consolidated Recommendation.** – The concerned committee of  
14 the Senate and the House of Representatives, at the termination of their  
15 respective sunset reviews, shall submit a consolidated recommendation to the  
16 Senate Finance Committee and the House Committee on Appropriations for  
17 appropriate action.

18          SEC. 8. **Possible Action or Recommendation.** – The concerned  
19 committees of the Senate and the House of Representatives may recommend:

20          a. the continued existence of and the corresponding budgetary allocation  
21 for the subject GOCC;

22          b. the termination of the existence of, or budget allocation for, the GOCC  
23 by either privatizing the said subject GOCC or dissolving the GOCC;

24          c. merging or consolidating two or more GOCCs when they perform  
25 similar or overlapping functions; and

26          d. such other recommendation or course of action they may deem as  
27 necessary.

28          SEC. 9. **Duty to disclose.** – GOCCs under sunset review shall be duty  
29 bound to disclose all pertinent information and make available all relevant

1 documents to the necessary acts under this section. Failure on their part to  
2 disclose all pertinent information required by the reviewing congressional  
3 committees, or any intentional attempt to delay the proceeding, for whatever  
4 purpose, shall subject such officers and directors to administrative, civil and  
5 criminal sanctions under existing laws.

6       SEC. 10. **Separability Clause.** – If for any reason, any section or  
7 provision of this Act, or any portion thereof, is declared unconstitutional, the  
8 remainder of this Act shall be affected by such declaration.

9       SEC.11. **Repealing Clause.** – Any provision rule or regulation contrary  
10 to or in conflict with this Act shall be considered, and is, repealed or modified  
11 accordingly.

12       For purposes of this Act, the Government Corporate Monitoring and  
13 Coordinating Committee, created under Executive Order No. 936 dated February  
14 1984, reconstituted under Memorandum Circular No. 10 dated 19 May 1986,  
15 strengthened under Executive Order No. 236 dated 22 July 1987, shall continue  
16 to exercise its powers and functions, and shall complement the congressional  
17 review mechanism created under this Act.

18       SEC. 12. **Effectivity.** This Act shall take effect fifteen (15) days after its  
19 publication in at least two (2) newspapers of general circulation.

Approved,