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SENATE

Senate Bill No. 767

RECEIVED BY: *fi*

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

Republic Act No. 8182, as amended by Republic Act No. 8555, defines Official Development Assistance (ODA), as 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.

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.

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


JINGGOY EJERCITO ESTRADA
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:

SECTION 1. Section 2 of Republic Act No. 8182, as amended, otherwise known as the Official Development Assistance Act of 1996, is hereby amended to read as follows:

SEC. 2. Official Development Assistance (ODA). - For purposes of this Act, ODA is a loan or loan and grant which means all of the following criteria:

- (a) It must be administered with the objective of promoting sustainable social and economic development and welfare of the Philippines;
- (b) It must be contracted with governments of foreign countries with whom the Philippines has diplomatic, trade relations or bilateral agreements or which are members of the United Nations, their agencies and international or multilateral lending institutions;
- (c) There are no available comparable financial instruments in the capital market; and,
- (d) It must contain a grant element of at least [twenty-five] FORTY percent (40Yo). Grant element under this Act is the reduction enjoyed by the borrower whenever the debt service payments which shall include both principal and interest and expressed at their present values discounted at ten percent (10%) OR AT THE YIELD ON COMPARABLE COMMERCIAL BONDS MOST RECENTLY ISSUED BY THE NATIONAL GOVERNMENT, WHICHEVER IS LOWER, are less than the face value of the loan or loan and grant. The grant element of a loan or loan and grant is computed at the ratio of (i) the difference between the face value of the loan or loan and grant and the debt service payments to (ii) the face value of the loan or loan and grant.

SEC. 3. Section 11-A of Republic Act No. 8182, as amended, is hereby amended to read as follows:

"SEC. 11-A. In the contracting of any loan, credit or indebtedness under this Act or any law, the President of the Philippines may, when necessary, agree to waive or modify the application of any provision of law granting preferences in connection with, or imposing restrictions on, the procurement of goods or services OR INFRASTRUCTURE PROJECTS: *Provided, however,* IF THE PROCUREMENT DOES NOT GO THROUGH COMPETITIVE BIDDING MANDATED UNDER REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT THE LOAN TO BE OBTAINED, REGARDLESS OF CLASSIFICATION, PRIOR TO ITS PERFECTION AND CONSUMMATION, AS WELL AS THE GOOD, SERVICE, OR INFRASTRUCTURE PROJECT THAT IS INTENDED TO BE FUNDED THEREWITH, SHALL BE THE SUBJECT OF REVIEW AND RATIFICATION BY AT LEAST TWO-THIRDS (2/3) OF THE MEMBERS OF THE SENATE; *Provided, further,* That as far as practicable, utilization of the services of qualified Filipino citizens or corporations or associations owned by such citizens in the prosecution of projects financed under this Act shall be prepared on the basis of the standards set for a particular project: PROVIDED, FINALLY, That the matter of preference in favor of articles, materials, or supplies of the growth, production or manufacture of the Philippines, including the method or procedure in the comparison of bids for purposes therefor, shall be the subject of agreement between the Philippine Government and the lending institution. *(as amended by R.A. 8555).*"

SEC. 4. Separability Clause. - Any portion or provisions of this Act that may be declared unconstitutional or invalid shall not have the effect of nullifying other portions and provisions hereof as long as such remaining portion or provision can still subsist and be given effect in their entirety.

SEC. 5. Repealing Clause. - All laws, decrees, executive orders, proclamations and administrative regulations, or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SEC. 6. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in at least two national papers of general circulation.

Approved,