

13 DEC -9 P4:43

SENATE
S. B. NO. **2001**

RECEIVED BY: *Jca*

Introduced by Senator Maria Lourdes Nancy S. Binay

EXPLANATORY NOTE

Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act", was enacted to govern procurement activities of the government in order to promote the ideals of good governance, with a view to transparency, competitiveness, streamlining, accountability and public monitoring in the procurement process.

The Government Procurement Reform Act specifically governs procurement activities of the government activities not contemplated within the definition of the law. The law does not contemplate lease of government assets. Section 4 of the Government Procurement Reform Act is clear in its scope and application, which states that:

"Section 4. Scope and Application. - This Act shall apply to the Procurement of Infrastructure Projects, Goods, and Consulting Services, regardless of source of funds, whether local or foreign by all branches and instrumentalities of government, its department, offices and agencies including government-owned and/or controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138." Xxx

Section 5 of the Implementing Rules and Regulations Part A (IRR-A) of the Government Procurement Reform Act defines procurement as follows:

"Procurement - refers to the acquisition of Goods, consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes," and other applicable laws, rules, and regulations."

Lease of assets, where the government is the vendor or the lessor, are income-generating activities and is well beyond the ambit of the Government Procurement Act.¹ Thus, in view of the peculiar nature of government contracts involving lease of government owned properties, it has been opined by the Government Procurement Policy Board² that such

¹ See GPPB-TSO Non-Policy Matter No. 135-2004 issued on October 14, 2004.

² See GPPB-TSO Non-Policy Matter No. 043-2004 issued on March 30, 1994.

transactions are governed by Executive Order No. 301, entitled "Decentralizing Actions on Government Negotiated Contracts, lease Contracts and Records Disposal."

Executive Order No. 301 however only provides which agencies have jurisdiction over lease contracts, but is unclear in the procedure that should be followed by government entities in entering into such transactions.

The proposed bill seeks to clarify the rules of procedure in entering into lease arrangements of government assets, with a view in encouraging legitimate commercial transactions that will promote the ideals of good governance.

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



MARIA LOURDES NANCY S. BINAY
Senator

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1 AN ACT PRESCRIBING THE RULES AND PROCEDURES FOR THE LEASE OF
2 GOVERNMENT ASSETS, AND FOR OTHER PURPOSES
3

4 *Be it enacted by the Senate and House of Representatives of the Philippines in Congress*
5 *assembled:*
6

7 **SECTION 1. Title.** This Act shall be known as "*Lease of Government Assets Act of 2013.*"
8

9 **SECTION 2. Declaration of Policy.** The disposition of government assets must be simplified
10 in order that all branches, department, agencies, subdivisions, and instrumentalities of the
11 government, including government-owned and controlled corporations, and local government
12 units are guided by a mechanism that would ensure proper disposition of government assets.
13

14 **SECTION 3. Definition of Terms.** As used in this Act, the term:

15
16 a.) "Government agency" shall refer to various units of the national and local
17 government, including a department, office, bureau, instrumentality, government-
18 owned and/or controlled corporation or its subsidiary, state or college university; and
19

20 b.) "Asset" shall mean any real or personal property, whether tangible or intangible,
21 which shall include lands, buildings and building space.
22

23 **SECTION 4. Jurisdiction over Lease Contracts.** The heads of the Government agency
24 intending to lease out government-owned assets for use by a private individual, corporation,
25 association or any other juridical entity shall have the authority to determine the
26 reasonableness of the terms of the lease and the rental rates.
27

28 **SECTION 5. Guidelines for Lease Contracts.** Consistent with existing laws, the Department
29 of Public Works and Highways (DPWH) shall formulate uniform standards or guidelines for
30 determining the reasonableness of the terms of lease contracts and of the rental rates of the
31 lease of Government assets for use by private individual, corporation, association, or other
32 juridical entity. The uniform standards or guidelines shall promote ideals of good
33 governance, and shall adopt reasonable terms responsive to present commercial conditions.
34

35 **SECTION 6. Negotiated Contracts.** Contracts, agreements or arrangements for the lease of
36 Government assets may be entered into by the Government agency concerned, without need
37 of undergoing open and competitive public bidding, provided that the following are observed:

1 (a) The contract, agreement, or arrangement shall comply with uniform standards
2 and guidelines established by the DPWH; and

3
4 (b) The contract, agreement, or arrangement shall be subject to the audit
5 jurisdiction of the Commission on Audit or its duly authorized representative
6 in accordance with existing rules and regulations.
7

8 **SECTION 7. *Exemption.*** This Act shall not apply to lease contracts entered into by the
9 Government with another Government agency, which shall continue to be governed by
10 existing laws applicable thereto.

11 **SECTION 8. *Separability Clause.*** If any portion or provision of this Act is declared void
12 and unconstitutional, the remaining portions or provisions hereof shall not be affected by
13 such declaration.
14

15 **SECTION 9. *Repealing Clause.*** The provisions of Executive Order No. 301 inconsistent
16 herewith are hereby expressly repealed. All other laws, decrees, orders, rules and regulations,
17 other issuances, or parts thereof inconsistent with the provisions of this Act are hereby
18 repealed or modified accordingly.
19

20 **SECTION 10. *Effectivity Clause.*** This Act shall take effect fifteen (15) days after its
21 complete publication in at least two (2) national newspapers of general circulation.
22

23
24 Approved,