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SENATE

Senate Bill No. 770

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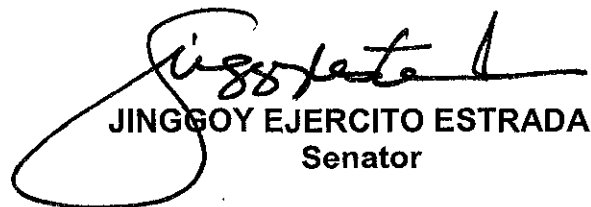
INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

The controversies that hounded the previous administration i.e. the National Broadband Network (NBN)-ZTE deal and the Cyber-Education Projects (CEP) have brought to fore the issue of whether or not Philippine procurement laws and processes, particularly Republic Act No. 9184, otherwise known as the *Government Procurement Reform Act*, is applicable to executive agreements involving foreign loans, especially in the light of the rulings of the Supreme Court in *Abaya vs. Ebdane* and *DBM-PS vs. Kolonwel*.

Presently, RA 9184 expressly states that the same is applicable to the procurement of infrastructure projects, goods, and consulting services regardless of source of funds, whether local or foreign, pursuant to Section 4 thereof. However, the same Section 4 of RA 9184 also provides that any treaty or international or executive agreement to which the Philippine government is a signatory shall be observed. There is, thus, an apparent confusion on the applicability of RA 9184 on the procurement of goods, services, and infrastructure projects that are funded by foreign loans classified as Official Development Assistance. Such confusion can only be addressed through the amendment of Section 4, RA 9184 by making it categorically clear that executive agreements involving foreign loans are expressly covered by the procurement rules and processes laid down under RA 9184.

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


JINGGOY EJERCITO ESTRADA
Senator

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AN ACT

SUBJECTING TREATIES, INTERNATIONAL OR EXECUTIVE AGREEMENTS INVOLVING FUNDING IN THE PROCUREMENT OF INFRASTRUCTURE PROJECTS, GOODS, AND CONSULTING SERVICES, TO BE INCLUDED IN THE SCOPE AND APPLICATION OF PHILIPPINE PROCUREMENT LAWS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT, AND FOR OTHER PURPOSES.

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

SECTION 1. Section 4 of Republic Act No. 9184, as amended, otherwise known as the Government Procurement Reform Act, is hereby amended to read as follows:

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 departments, offices and agencies, including government-owned and/or-controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act, [to which] ENTERED INTO BY the Philippine Government [is a signatory] PRIOR TO THE EFFECTIVITY OF THIS ACT, shall be observed; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL BE CONSTRUED AS WAIVING THE APPLICATION OF THE PROVISIONS OF THIS ACT; PROVIDED, FINALLY, THAT PRIORITY SHALL ALWAYS BE GIVEN TO THE APPLICATION OF THE RULES ON COMPETITIVE BIDDING. ANY DOUBT WITH RESPECT TO THE SCOPE AND APPLICATION OF THIS ACT SHALL BE CONSTRUED IN FAVOR OF COMPETITIVE BIDDING.

SEC. 2 . 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. 3. Repealing Clause. - All laws, decrees, executive orders, proclamations and administrative regulations, or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SEC. 4. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in at least two national papers of general circulation.

Approved,